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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 216

CHARLES BURRILL, PLAINTIFF IN ERROR,

vs.

THE CITY OF BOSTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED DECEMBER 11, 1867.

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1 The President of the United States to the judges of the Circuit Court holden in and for the district of Massachusetts, greeting:

UNITED STATES, *ss:*

Because that in the record and process, and also in the rendering of a suit before you, or some of you, between Charles Burrill, plaintiff, and the city of Boston, defendant, in a plea of the case a manifest error has intervened to the great damage of the said Charles Burrill, as in his complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties in this behalf, you are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat ot the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness, the Honorable Salmon P. Chase, esquire, Chief Justice of the said Supreme Court at Washington, aforesaid, this twenty-third day of November, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States the ninety-second.

JOHN G. STETSON, *Clerk.*

Allowed by—

NATHAN CLIFFORD.

Circuit Court of the United States.

2 UNITED STATES OF AMERICA, *Masachusetts District, ss*:

And now here the judges of the Circuit Court of the United States in and for the said district make return of this writ, by annexing hereto, and sending herewith, under the seal of the said Circuit Court, a true and attested copy of the record and process in the suit within mentioned, and of all proceedings therein.

In testimony whereof I, John G. Stetson, clerk of said Circuit Court of the United States within and for the district of Massachusetts, have hereunto set my hand and the seal of said court this twenty-ninth day of November, A. D. 1867.

JOHN G. STETSON, *Clerk.*

3 The United States of America to the city of Boston, in the Commonwealth of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the Circuit Court of the United States, district of Massachusetts, wherein Charles Burrill is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Nathan Clifford, justice of the Supreme Court of the United States, this 23d day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

I hereby acknowledge that the above citation has been served on the city of Boston.

J. G. ABBOTT,
Att'ys for Def'ts.

Endorsed: Charles Burrill *vs.* City of Boston. Citation and return.

4 Know all men by these presents, that we, Luther Crane, of Cambridge, county Middlesex, and Benjamin F. Blake, of Brookline, county of Norfolk, holden and stand firmly bound and obliged unto the city of Boston, a municipal corporation within the district and Commonwealth of Massachusetts, in the full and just sum of five hundred dollars, to be paid unto the said city of Boston, its successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the twenty-third day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

The condition of this obligation is such, that whereas lately, to wit, at the October term, A. D. 1867, of the Circuit Court of the United States for the first circuit and district of Massachusetts, at Boston, in a suit depending in said court between Charles Burrill, a citizen of the city of Nashua, in the State and district of New Hampshire, and the said city of Boston, judgment was rendered against the said Charles Burrill, and the said Charles Burrill having obtained a writ of error, and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation, directed to the said city of Boston, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said Charles Burrill shall prosecute said writ of error to effect and answer all damages and costs, if he shall fail to make his plea good, then

the above obligation to be void, else to remain in full force and virtue.

[SEAL.] CHARLES BURRILL.
[SEAL.] LUTHER CRANE.
[SEAL.] B. F. BAKER.

Sealed and delivered in the presence of—
CHARLES S. CRANE.

This bond is approved.

J. P. HEALEY,
For City of Boston.

A true copy of bond and approval.

JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

Endorsed: Charles Burrill *vs.* City of Boston. Copy bond to party and approval thereof.

5 UNITED STATES OF AMERICA, *Massachusetts District, ss*:

At a Circuit Court of the United States for the first circuit begun and holden at Boston, within and for the district of Massachusetts, on Tuesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-seven, before the Honorable Nathan Clifford, associate justice, and the Honorable John Lowell, district judge, Charles Burrill, plaintiff, *vs.* The City of Boston, defendant, in a plea of the case, for that whereas, heretofore, to wit, on the thirty-first day of May, in the year of our Lord one thousand
6 eight hundred and sixty-four, the United States of America were engaged in putting down a rebellion within said United States; and whereas said United States for said purpose had at divers times, from time to time, previous to said date, called upon the various sections, districts, and municipalities within said United States to supply their several quotas or portions of the men required to put own said rebellion; and whereas any excess or surplus above said several calls furnished and supplied by said sections, districts, and municipalities, were to be credited to and in favor of said several sections, districts, and municipalities; and whereas it was expected and believed by the mayor, and the other municipal authorities of the said city of Boston, that other calls for men would be made by the United States; and whereas the number of men to be procured upon the quota of the city of Boston for the purposes aforesaid depended upon the number of men that had been credited, and might be procured to be credited to said city upon said quota; and whereas it was believed by said mayor, and the other municipal authorities of the said city of Boston, that there were many men in the service of the United States that of right ought to be credited to said city upon and under said calls which had been and might be thereafter
7 made, which said men had not been credited as aforesaid; and whereas it was for the interest of said city to procure and obtain the crediting to said city upon the quota of said city of all men said city was entitled to have credited as aforesaid, the said city of Boston, heretofore, to wit:

On said thirty-first day of May aforesaid, by their agreement and promise in writing, made and executed by and in behalf of said city, by the hand of Frederick W. Lincoln, jr., mayor of said city, did promise, undertake, and agree to and with said Charles Burrill, that if the said Burrill would obtain credits upon the quota of said city, the said city would pay said Burrill the sum of one hundred and twenty-five dollars for each and every full man so credited upon said quota; and that said money should be paid to said Burrill whenever said Burrill should present to said Lincoln, mayor as aforesaid, official certificates from the proper authority showing that said credits had been given; and said Burrill, heretofore, to wit, on the fifth day of September, in the year one thousand eight hundred and sixty-four, did obtain to be credited upon said quota of said city of Boston six thousand five hundred and twenty-nine full men, and hereto-
8 fore, to wit, on said fifth day of September, did present to said Frederick W. Lincoln, jr., mayor as aforesaid, certificates from the proper authority showing that said credits had been given; and said city of Boston, in consideration thereof, became indebted and promised to pay to said Burrill the sum of one hundred and twenty-five dollars for each and every one of said six thousand five hundred and twenty-nine men, amounting in the whole to eight hundred and sixteen thousand one hundred and twenty-five dollars. Yet the said city of Boston, though thereto requested, has not paid the plaintiff said sum or any part thereof, and still refuses to pay the plaintiff said sum or any part thereof.

Also, for that on the thirty-first day of May, in the year of our Lord one thousand eight hundred and sixty-four, at said Boston, in consideration that the plaintiff then and there undertook and agreed to obtain and procure credits upon the quota of the city of Boston, it being important and for the interest of said city of Boston—and the inhabitants thereof to procure credits upon the quota of said city, of the calls for men then made or the calls for men that might be made by the President of the United States to put down the rebellion then existing, the said city of Boston, by their agreement in writing, made and executed by them by and through the hand of
9 Frederick W. Lincoln, junior, mayor of said city, then and there promised, undertook, and agreed to and with said Charles Burrill, to pay to the said Charles Burrill the sum of one hundred and twenty-five dollars for each and every full man said Burrill would obtain and procure to be credited upon said quota as aforesaid whenever said Burrill would present to said Frederick W. Lincoln, junior, mayor of said city, the official certificates from the proper authority showing that said credits had been given; and said Burrill relying upon and trusting and confiding in said agreement and promise aforesaid of said city, at great expense and trouble, thereafterwards, to wit, on the fifth day of September, in the year one thousand eight hundred and sixty-four, did procure and obtain credits upon the quota of the city of Boston to the number of six thousand five hundred and twenty-nine full men; and heretofore, to wit, on said last-named date, did present to said Lincoln, mayor, as aforesaid,

official certificates from the proper authority that said credits had been given as aforesaid. And said city of Boston then and there became indebted to the plaintiff, and in consideration thereof, promised and undertook to pay the plaintiff one hundred and twenty-five dollars for each of said six thousand five hundred and twenty-
10 nine men credited as aforesaid, amounting in the whole to eight hundred and sixteen thousand one hundred and twenty-five dollars; yet said city of Boston, though thereto after requested, refused to pay the plaintiff said sum or any part thereof.

Also for that heretofore, to wit, on the thirty-first day of May, in the year eighteen hundred and sixty-four, in consideration that it was important and for the interest of the city of Boston and the inhabitants thereof to procure credits upon the quota of said city of the calls for men then made and that might be made by the President of the United States to put down the rebellion then existing, the said city of Boston, by their agreement in writing, promised and undertook to and with the plaintiff, that if the plaintiff would obtain credits upon the quota of the city of Boston, the said city of Boston would pay to said Burrill the sum of one hundred and twenty-five dollars for every full man said Burrill would procure to be credited as aforesaid; and thereafter, to wit, on the fifth day of September in the year aforesaid, the said Burrill did procure credits upon the quota of said city of Boston to the number of six thousand five hundred and twenty-nine full men, and said city of Boston in consideration
11 thereof, became liable, and promised to pay to said Burrill one hundred twenty-five dollars for each and every one of said six thousand five hundred and twenty-nine men, amounting in the whole to eight hundred and sixteen thousand one hundred and twenty-five dollars; yet, though often requested, the said city refuses to pay said sum or any part thereof.

Also, for that the said defendant, on the day of the purchase of this writ, being indebted to the plaintiff in one million of dollars for goods sold and delivered by the plaintiff to the defendants; and in the same amount for work done and materials for the same provided by the plaintiff for the defendants, at their request; and in the same amount for money lent by the plaintiff to the defendant; and in the same amount for money received by the defendants to the use of the plaintiff; and in the same amount for money paid by the plaintiff for the use of the defendants, at their request; and in the same amount for money due from the defendants to the plaintiff for interest of money before then due and owing from the defendant to the plaintiff and by the plaintiff forborne to the defendants at the defendants request for a long time before then elapsed, and in the further
12 sum of eight hundred and sixty-nine thousand nine hundred and eighty-nine dollars, according to the account annexed; in consideration thereof promised to pay the same amount to the plaintiff on demand; yet they have not paid the same.

To the damage of the said Charles Burrill, as he says, the sum of one million dollars.

On said thirty-first day of May aforesaid, by their agreement and promise in writing, made and executed by and in behalf of said city, by the hand of Frederick W. Lincoln, jr., mayor of said city, did promise, undertake, and agree to and with said Charles Burrill, that if the said Burrill would obtain credits upon the quota of said city, the said city would pay said Burrill the sum of one hundred and twenty-five dollars for each and every full man so credited upon said quota; and that said money should be paid to said Burrill whenever said Burrill should present to said Lincoln, mayor as aforesaid, official certificates from the proper authority showing that said credits had been given; and said Burrill, heretofore, to wit, on the fifth day of September, in the year one thousand eight hundred and sixty-four, did obtain to be credited upon said quota of said city of Boston six thousand five hundred and twenty-nine full men, and hereto-
8 fore, to wit, on said fifth day of September, did present to said Frederick W. Lincoln, jr., mayor as aforesaid, certificates from the proper authority showing that said credits had been given; and said city of Boston, in consideration thereof, became indebted and promised to pay to said Burrill the sum of one hundred and twenty-five dollars for each and every one of said six thousand five hundred and twenty-nine men, amounting in the whole to eight hundred and sixteen thousand one hundred and twenty-five dollars. Yet the said city of Boston, though thereto requested, has not paid the plaintiff said sum or any part thereof, and still refuses to pay the plaintiff said sum or any part thereof.

Also, for that on the thirty-first day of May, in the year of our Lord one thousand eight hundred and sixty-four, at said Boston, in consideration that the plaintiff then and there undertook and agreed to obtain and procure credits upon the quota of the city of Boston, it being important and for the interest of said city of Boston—and the inhabitants thereof to procure credits upon the quota of said city, of the calls for men then made or the calls for men that might be made by the President of the United States to put down the rebellion then existing, the said city of Boston, by their agreement in writing, made and executed by them by and through the hand of
9 Frederick W. Lincoln, junior, mayor of said city, then and there promised, undertook, and agreed to and with said Charles Burrill, to pay to the said Charles Burrill the sum of one hundred and twenty-five dollars for each and every full man said Burrill would obtain and procure to be credited upon said quota as aforesaid whenever said Burrill would present to said Frederick W. Lincoln, junior, mayor of said city, the official certificates from the proper authority showing that said credits had been given; and said Burrill relying upon and trusting and confiding in said agreement and promise aforesaid of said city, at great expense and trouble, thereafterwards, to wit, on the fifth day of September, in the year one thousand eight hundred and sixty-four, did procure and obtain credits upon the quota of the city of Boston to the number of six thousand five hundred and twenty-nine full men; and heretofore, to wit, on said last-named date, did present to said Lincoln, mayor, as aforesaid,

official certificates from the proper authority that said credits had been given as aforesaid. And said city of Boston then and there became indebted to the plaintiff, and in consideration thereof, promised and undertook to pay the plaintiff one hundred and twenty-five dollars for each of said six thousand five hundred and twenty-
10 nine men credited as aforesaid, amounting in the whole to eight hundred and sixteen thousand one hundred and twenty-five dollars; yet said city of Boston, though thereto after requested, refused to pay the plaintiff said sum or any part thereof.

Also for that heretofore, to wit, on the thirty-first day of May, in the year eighteen hundred and sixty-four, in consideration that it was important and for the interest of the city of Boston and the inhabitants thereof to procure credits upon the quota of said city of the calls for men then made and that might be made by the President of the United States to put down the rebellion then existing, the said city of Boston, by their agreement in writing, promised and undertook to and with the plaintiff, that if the plaintiff would obtain credits upon the quota of the city of Boston, the said city of Boston would pay to said Burrill the sum of one hundred and twenty-five dollars for every full man said Burrill would procure to be credited as aforesaid; and thereafter, to wit, on the fifth day of September in the year aforesaid, the said Burrill did procure credits upon the quota of said city of Boston to the number of six thousand five hundred and twenty-nine full men, and said city of Boston in consideration
11 thereof, became liable, and promised to pay to said Burrill one hundred twenty-five dollars for each and every one of said six thousand five hundred and twenty-nine men, amounting in the whole to eight hundred and sixteen thousand one hundred and twenty-five dollars; yet, though often requested, the said city refuses to pay said sum or any part thereof.

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12 sum of eight hundred and sixty-nine thousand nine hundred and eighty-nine dollars, according to the account annexed; in consideration thereof promised to pay the same amount to the plaintiff on demand; yet they have not paid the same.

To the damage of the said Charles Burrill, as he says, the sum of one million dollars.

Annexed to the declaration in this case is a paper in words and figures, following :

City of Boston to Charles Burrill, Dr.

1864.	To services in procuring credits upon the quota of the city of Boston to the number of 6,529 men at $125 00, each man		$816,125 00
	Interest from Sept. 8th, 1864, to date of writ ..		53,864 00
			$869,989 00

The writ in this cause is dated the fourteenth day of September, A. D. 1866, and was duly entered at the October term of this court, A. D. 1866, when and where the parties appeared by their respective attorneys. This cause was thence continued to the May term of this court, A. D. 1867, when the following plea and issue was filed, namely :

U. S. Circuit Court for the first circuit, May term, 1867.

CHARLES BURRILL
vs.
CITY OF BOSTON.

MASSACHUSETTS DISTRICT, *ss* :

13 And now the defendant comes, &c., when, &c., and says it never promised, in manner and form, as the plaintiff hath above alleged against it in his said declaration, and of this it puts itself upon the country.

By J. P. HEALY, *its Attorney.*

And the plaintiff doth likewise.

By BENJ. DEAN, *his Attorney.*

Issue being thus joined, the cause, after a full hearing, was committed to a jury sworn according to law to try the issue, who, after hearing all matters and things concerning the same, return their verdict therein upon oath and say: The jury find that the defendant did not promise, in manner and form, as the plaintiff hath alleged against it in either count in the said declaration. This cause was thence continued to this present October term, A. D. 1867, when, to wit, November 13th, it is considered by the court that the said city of Boston, defendant, recover of the said Charles Burrill, plaintiff, its costs of suit, taxed at forty-one dollars and forty-five cents.

Upon the trial of the said cause and before the jury left the bar, the said Charles Burrill, plaintiff, filed his bill of exceptions, which was sealed and allowed by the court, and is in words and figures following:

14 Circuit Court of the United States, Massachusetts district, May term, 1867.

CHARLES BURRILL
v.
CITY OF BOSTON.

This was an action of assumpsit. The plaintiff, at the time of the suing out of the was a resident and citizen of Nashua, in the State of New Hampshire, and the defendant a duly incorporated city in the State of Massachusetts. The declaration contained several special counts, and several counts in indebitatus assumpsit. The general issue was pleaded and joined.

On the trial the plaintiff, in support of his special counts, read to the jury a paper writing, dated May 31st, 1864, and signed by F. W. Lincoln, jun., mayor, a copy whereof is hereto annexed, marked A; and in support of these special counts and of his general counts, introduced the following testimony:

Testimony of Wm. W. Bullock.

By plaintiff:

Q. Are you engaged as clerk in the adj't gen'l's office of this Commonwealth?

A. Yes, sir.

Q. How long have you been so engaged?

A. Since March, 1864.

Q. Then you were so engaged while the proceedings were going on for filling up the requisitions for troops in the year 1864?

A. Yes, sir.

Q. Had you to do with the records of that proceeding?

15 A. Yes, sir.

Q. Have you produced certain records that you have been asked for, here?

A. Yes, sir.

Q. Where did this paper [large list of names] come from?

A. That list was placed in my hands by the committee who made the naval credits.

Q. That committee were whom?

A. Gov. Andrew and Gov. Clifford. It was sent down from their office.

Q. Before or after the credits were allowed?

A. After the credits were allowed.

Q. Had it remained in the adj't gen'l's office ever since, excepting when used in court?

A. Yes, sir.

Q. Do you know, from the course of official business there, that these credits were allowed upon the quota of the city of Boston?

A. They were.

Annexed to the declaration in this case is a paper in words and figures, following :

City of Boston to Charles Burrill, Dr.

1864.	To services in procuring credits upon the quota of the city of Boston to the number of 6,529 men at $125 00, each man	$816,125 00
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By BENJ. DEAN, *his Attorney.*

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A. Yes, sir.

Q. Had you to do with the records of that proceeding?

15 A. Yes, sir.

Q. Have you produced certain records that you have been asked for, here?

A. Yes, sir.

Q. Where did this paper [large list of names] come from?

A. That list was placed in my hands by the committee who made the naval credits.

Q. That committee were whom?

A. Gov. Andrew and Gov. Clifford. It was sent down from their office.

Q. Before or after the credits were allowed?

A. After the credits were allowed.

Q. Had it remained in the adj't gen'l's office ever since, excepting when used in court?

A. Yes, sir.

Q. Do you know, from the course of official business there, that these credits were allowed upon the quota of the city of Boston?

A. They were.

The plaintiff's counsel read the heading as follows:

"CITY OF BOSTON, CO. OF SUFFOLK, STATE OF MASS.

List of men enlisted in the naval service of the U. S. prior to Feb. 24, 1864, prepared in accordance with instructions from the Provost Marshal General's Department."

No.	Name.	Age.	Occupation.	Residence.	Ship to which transferred.	Place of enlistment.

16 Q. This list contains how many names?

A. I don't recollect how many there are on that roll; they are footed at the bottom. [6,101.]

Q. Do you know Henry C. Burgess, ass't paymaster, U. S. navy?

A. I did at the time.

Q. Did you ever see his writing, sir?

A. Yes, sir.

Q. Do you know Charles Green, a capt. in the navy?

A. Yes, sir.

Q. Ever see his writing?

A. Yes, sir; I was on board the ship three months, collecting names there.

Q. Are these the signatures [on large list] of Green and Burgess?

A. Yes, sir.

Q. Were these memoranda upon the list when produced?

A. Yes, sir.

Certificate read, as follows:

"I certify that the annexed list of men were shipped for the U. S. navy, at the authorized recruited rendezvous at Boston, and were received on board this ship, and are now borne upon its rolls. No other certificates, to my knowledge, have been given as to these men.

(Signed) "HENRY C. BURGESS,
"*A. A. Paymaster, U. S. Navy.*

"U. S. Rec'g Ship Ohio, Boston, June 18, 1864.

17 "Approved: CHARLES GREEN, *Capt.*"

Q. Do you know Mr. Lincoln, late mayor of the city?

A. Yes, sir.

Q. Is that his signature? [On large list.]

A. Yes, sir.

Certificate read:

"I, F. W. Lincoln, jr., mayor of the city of Boston, hereby certify that the above-named men are, to the best of my knowledge and belief, legal citizens of said city and liable to military duty therein.

(Signed) "F. W. LINCOLN, JR."

"BOSTON, *June* 20, 1864.

"SUFFOLK, *ss:*

"Personally appeared the above-named, F. W. Lincoln, jr., and made oath, that the above certificate by him signed is correct and true, to the best of his knowledge and belief.

"Before me, JAMES M. BUGBEE,
"*Justice of the Peace.*"

(Defence waived proof of Mr. Bugbee's signature.)

Q. Do you know J. W. Le Barnes?
A. Yes, sir.
Q. Ever seen him write?
A. Yes, sir.
Q. Is that his signature? [On large list.]
A. Yes, sir.
Q. Do you know Wm. Greene Howe?
A. Yes, sir; he was a captain in my regiment.
Q. Ever seen him write?
A. Yes, sir.
Q. Is this his signature? [On large list.]
18 A. Yes, sir.
Q. Is that also the certificate of Mayor Lincoln? [Another certificate on large list.]
A. Yes, sir.
Q. Were these certificates on the paper when sent to your office?
A. Yes, sir.

Certificates read:

"PROVOST MARSHAL'S OFFICE, 3D DISTRICT, MASS.,
"*Boston, July* 27, '64.

"I certify that the names borne on the within list, and numbered from one (1) to one hundred and ninety-six, (196,) inclusive, are enrolled in the city of Boston, 3d dist., State of Mass.

(Signed) "L. W. LE BARNES,
"*Capt., Prov. Mar. 3d Dist., Mass.*"

"PROVOST MARSHAL'S OFFICE, 4TH DIST., MASS.,
"*July 27th,* 1864.

"I certify that the names borne on the within list, and numbered from one hundred and ninety-six (196) to four hundred and twenty-eight, (428,) inclusive, are enrolled in the city of Boston, 4th dist., State of Mass.

(Signed) "W. GREEN E. HOWE,
"*Capt., Prov. Marshal 4th Dist., Mass.*"

"The city of Boston claims that the persons whose names are contained on the foregoing list are citizens of the city of Boston, and have enlisted in the navy of the U. S., and ought to be credited to Boston, under the 8th section of the 227th chapter of
19

the acts of the first session of the 38th Congress, as so many persons furnished by said city to the military force of the U. S.; and said city hereby requests that the same be allowed.

(Signed) "W. F. LINCOLN, JR., *Mayor.*"

Q. State whether Le Barnes acted as provost marshal of the 3d dist.

A. He did.

Q. You told me that Capt. Howe was captain in your own regiment.

A. Yes, sir.

Q. Do you know whether he acted as provost marshal of the 4th dist.?

A. He did.

Q. You have another paper here? [The marine list.]

A. Yes, sir.

(The plaintiff's counsel stated that this list contained 428 names, and was certified in the same way as the navy list.)

Q. What is the meaning of the term "full men?"

A. Some men are shipped for one year, some for two years, and some for three years. A "full man" is a three years' man. It takes three one-year men to make a full man.

Q. You have another paper?

A. Yes, sir. This is the credits made by the commissioners.

Q. Is this a copy of the original?

20 A. A copy.

Q. From your office?

A. Yes, sir; I never saw the original.

Q. Where was the original sent?

A. I presume to Washington.

(Heading of the list, dated Sept. 5th, 1864, read. The list gives the assignments of naval credits to the various towns and cities, the number given to Boston being $5,224\frac{2}{3}$ three-years' men.)

Cross-examination.

By def't's counsel:

Q. I understand you had nothing to do with the allowance or with the work before the commission, Gov. Andrew and Gov. Clifford?

A. I worked on it; some of it.

Q. But you were not employed by either of the commissioners, or upon the work of the commission?

A. No, sir.

Q. So that all you know, or all you mean to tell the court is, that after the commission had closed, you received those papers that have been put in with those endorsements upon them?

A. Yes, sir.

Q. You received all those lists together?

A. Yes, sir; I don't mean to be understood that I didn't help make the credits.

21 Q. You helped make the credits?

A. I had twenty clerks at work night and day.
Q. For the commission?
A. Yes, sir.
Q. Then you mean that you and your clerks helped make up this list?
A. I mean to say that we made the credits. We had to copy the names.
Q. You helped make the list for the commissioners?
A. I went to the "Ohio" and worked three months with another clerk, making the list for the commissioners.
Q. A complete list of all the enlistments that had been made during the war?
A. Yes, sir.
Q. That is, you and your clerks, under your direction, made for these two commissioners a complete list of the whole enlistments in the marine and naval service up to the time of the setting of the commission, and furnished that to the commission?
A. Yes, sir.
Q. Then upon those lists they made these different apportionments to the different cities and towns?
A. Yes, sir.
Q. In reference to this particular list which you have produced; that came to you from the commissioners, as it is, after they got through?
22 A. I had had that before, when I was up there.
Q. You credited from that list?
A. I didn't have it in my possession, but as one of the clerks.
Q. You worked upon it, helping make out this list?
A. No, sir.
Q. Where is the list you helped to make out?
A. In a dozen books in my office.
Q. And this list is made out from those books?
A. No, sir; it is made out from other calculations. I don't know where they got them.
Q. Did you have anything to do with making out this list?
A. No, sir.
Q. Then the first you saw of it was when it was returned by the commissioners?
A. No, sir; while I was at work in the office making the credits.
Q. You saw it before these endorsements were upon it?
A. No, sir; I saw it with these endorsements.
Q. And then it was handed over to you by the commissioners?
A. Yes, sir.
Q. And filed in the office?
A. Yes, sir.
Q. Your work was to copy what appeared on the books of the receiving ship?
23 A. Yes, sir; when I was on board the ship.
Q. And you and your clerks made a copy simply, and copied everything?

A. Yes, sir.

Q. Had you anything to do with making the apportionments before the commissioners adjudicated upon them?

A. Yes, sir; if I understand you, I did. I took my list that I had made on board the ship, and assisted in making a list of every town there was there, and opposite the man's name was put the town he belonged to.

Q. That is to say, when there was a claim made from one town to another town, you took that claim and compared it with the list of the whole to see whether the name was also on the list?

A. Yes, sir; and credited the man to the town.

Q. And some marks were put upon the list, showing that the names had been compared with the list of the whole?

A. Yes, sir.

Q. That is all you had to do with reference to the matter?

A. Yes, sir.

Q. Then these lists came into your possession before the 5th of Sept.?

A. Not before then; three months after.

Q. You have a list of the apportionments at large?

24 A. That is the additional credits they speak of. [The commissioners.]

Q. It amounts to 70 $67\frac{2}{3}$ in all?

A. Yes, sir.

Q. This list was made up from the names obtained by you from the receiving ship which had not been claimed and assigned to any of the towns or cities previous to this time?

A. Yes, sir.

Q. But so far as residence in the Commonwealth was concerned, there was the same evidence in the one case as in the other?

A. Yes, sir.

Q. And the only difference was, that certain towns or cities made claims to certain names which were allowed to them, and there were 7,000 left, not claimed by anybody; and they were distributed to the several towns and cities?

A. Yes, sir.

Q. Of your own knowledge you know nothing of the state of the quota or the call from these different districts in reference to which there might be any deficiency, say on Sept. 5?

A. I know nothing about it.

Q. All you know, and all you can say is, that these were allowed, on different quotas, to the different towns and cities or wards, that so many credits were given to them?

25 A. Yes, sir.

Q. Whether or not there was any deficiency in those towns, cities, or wards at that point of time, you have no means of knowing?

A. No, sir.

Q. But simply that these credits were allowed at that time to them—so far as you know?

A. Yes, sir.

The court inquired whether it was understood that the four papers which had been referred to had been put in by the pl'ff. The counsel for the pl'ff replied, that it was immaterial in regard to the last paper, (the apportionment at large,) but it might be regarded as put in with the others, and stated that of the 7,000 apportioned at large, Boston got, in the 3d dist. 648, and in the 4th dist. 424.

Testimony of Sam'l F. McCleary, city clerk.

By pl'ff's counsel:

Q. Do you know the signature of Mayor Lincoln?
A. Yes, sir.
Q. Do you that date there? [or contract]
A. Yes, sir; that date is in his writing.
Q. And that is his signature, is it?
A. Yes, sir.

Pl'ff's counsel. I now offer the contract.

Contract read, as follows:

26 "In consideration that Charles Burrill, of Brookline, Mass., shall obtain credits upon the quota of the city of Boston, I hereby agree to pay said Charles Burrill the sum of $125 per man for each and every **full* [*this word was interlined in the original] man so credited upon said quota; the money to be paid said Burrill whenever he presents to me the official certificate from the proper authorities, showing that said credits have been given.

(Signed) "F. W. LINCOLN, JR., *Mayor.*

"BOSTON, *May 31st*, 1864."

[Cancelled revenue stamp, May 31st, 1864.]

Q. The word "full" interlined here; whose handwriting is this? Whether that is Mr. Lincoln's or not?
A. I can't say about that word.
Q. From your knowledge of his handwriting, looking at that, what is the impression on your mind?
A. I can't testify with regard to it. I don't know whether it is or not.
Q. Whose handwriting is that?
(Letter exhibited.)
A. That is Mr. Bugbee's handwriting.
Q. What office did Mr. Bugbee hold at that time?
A. At that time he was the mayor's clerk.
Q. Who signs it?
A. That is Mr. Lincoln's signature.

Letter read:

"MAYOR'S OFFICE, CITY HALL,
"*Boston, June* 20, 1864.

27 "Brig. Gen. JAMES B. FRY,
"*Prov. Mar. Gen'l, Washington, D. C.:*

"SIR: Mr. Charles Burrill, in behalf of the city of Boston, will hand you this; and with it lists duly certified by the proper officers of 6,529 men, who enlisted in the navy and marine corps prior to Feb. 24, 1864. All of these persons belong to Boston, and not one of them has been credited to the quota either of the city or State, under the acts of Congress. The city is entitled to these credits. By so crediting these men, you not only do an act of justice to the city, but you make their families and kindred dependent upon them to receive the State aid. I respectfully request, therefore, that you will direct that they be all credited upon the quota of Boston.

"Very respectfully, your obedient servant,
(Signed.) "F. W. LINCOLN, JR."

Q. Mr. McCleary, you are the city clerk, and were in 1864?
A. Of Boston; yes, sir.
Q. Have you the records of the doings of the board of alderman?
A. I have, for 1864 and 1865.
Q. Turn, if you please, to p. 16 of the XLII volume.
28 A. I have it, sir.
Q. What is the date?
A. The date of the passage of the order, I presume, to which you refer; the date of its passage is January 16th, 1864. The date of its introduction is January 11.
Q. Will you read that order, if you please?
A. [Reads.] "Ordered: That the board of aldermen, with such as the common council may join, be a committee upon the subject of volunteer enlistments into the army, with authority to take such steps under the laws of the Commonwealth, and such military orders as have been or may be promulgated for raising the quota of Boston, as they may deem expedient; all expenses incurred by them to be charged to the appropriation for recruiting, sent down for concurrence Jan. 14; came up concurred, and the president of the common council and Messrs. Keany, Hewes, McLean, Reed, Glancy, Putnam, Wadsworth, Warren, Wells, Bunton, Woodbury, Jackson, Ordway, McCarthy, Bradley, Loring, Carpenter, Haynes, Stebbins, Darrow, Cumston, Richardson of Ward 11, Goggins and Coleman were joined. Approved by the Mayor January 16, 1864."
Q. Will you tell me who were to be by the order? I did not get it, quite.
29 A. The whole board of aldermen were appointed, according to the order, and two members from each ward were joined in the common council.
Q. To fill the quota by such means as they deemed expedient?
A. Yes, sir.
Q. Did the committee go on and act?
A. That I cannot tell you about, sir.

Q. Is there any record of their doings on the books of the board of aldermen and city council?

A. No, sir; they had full powers; they did not report.

Q. What, sir?

A. They had full powers; I think the order was "with authority to take such steps as they deemed expedient."

Q. They never made any report? Do you know that they ever had a meeting?

A. I do not, sir, of my own knowledge.

Q. Is there any record of the city under your charge—any record of their meeting?

A. No, sir.

Q. Will you turn to the record of March 30? (pps. 129 and 130.) What record do you find there?

30 A. I have a record there of a loan. It was initiated March 30th, 1864, and completed April 1st, 1864. It originated in the board of aldermen and was sent to the common council and was approved April 18th, 1864.

Q. Will you read that?

A. (Reading.) "Ordered, that the treasurer be authorized to borrow, under the direction of the committee on finance the sum of two hundred thousand dollars, the same to be appropriated, under the direction of his honor the mayor, of one hundred and twenty-five (125) dollars, (A) to each volunteer enlisted and mustered on and after the thirtieth day of March, 1864, into the service of the United States, as a part of the quota of the city of Boston, in accordance with an act of the legislature approved Mar. 18, 1864, and entitled 'An act to authorize towns or cities to raise money for recruiting purposes.' and also 'An act in addition to the same, approved March 28th, 1864.'"

The order was read twice, and sent down for concurrence; but at a subsequent meeting and before it reached the common council, the order was amended by striking out the word "to" and inserting the word "for."

Q. That is, to pay (125) one hundred and twenty-five dollars *for* every recruit, instead of to him?

A. Yes, sir; I think that corresponded with the act.

31 Q. That is to say, they might pay it to somebody else?

A. Yes, sir; that order was finally passed by the board of aldermen and sent to the common council, and was approved by the mayor April 1st, 1864, in order to procure a loan of two hundred thousand dollars.

Q. Will you turn to page 237? (Q. By Mr. Abbott.) What is the date of it?

A. The date of its introduction is May 9th, 1864. The date of its final passage is May 20th, 1864. The date of the order I propose to read is found on pps. 237 and 243; the order reads as follows:

"Ordered, that the treasurer be hereby authorized to borrow a sum not exceeding two hundred thousand dollars, and that the same be appropriated to the payment of bounties to volunteers under the acts

of the legislature approved 18th and 20th of March last. Ordered further, that the money so borrowed be assessed at the next annual assessment according to law."

That order was passed and sent down for concurrence and came up concurred, and was approved by the mayor May 20th, 1864.

Q. Will you pass to page 370, sir?

A. Yes, sir; I have that here.

Q. Under what date?

32 A. The order originated on date of July 21, 1864, and was finally passed July 23, 1864. Shall I read this?

Q. Yes, sir.

A. (Reading.) "Ordered, that the treasurer be hereby authorized to borrow, under the direction of the committee on finance, a sum not exceeding five hundred thousand dollars, and that the same be applied for recruiting services under the act of the legislature approved 18th and 20th of March last. Passed and sent down for concurrence; came up concurred. Approved by the mayor July 23d, 1867."

Q. To be applied to recruiting services under the acts of the legislature?

A. Yes, sir.

Q. That was a unanimous vote, was it not, sir?

A. Yes, sir; there were no negatives at all.

Q. Do you find any record, sir, of any acts of the city government in relation to the disbursement of this money?

A. I do not, sir, upon my records.

Q. Any report of any committee? Anything showing what was done with the money?

A. No, sir.

Q. Now, sir; whether that recruiting committee dissolved after a while, and the recruiting was taken up by the board of aldermen?

33 A. I do not recollect of any record being made, sir, of that kind. I think there was nothing passed by the board of aldermen.

Q. I want to get at the fact.

A. I shall have to testify entirely from opinion or belief rather than recollection.

Judge Clifford. State your knowledge.

Q. I ask now, sir, the benefit of your recollection. We find a committee appointed January 11th, 1864—a committee of the board of aldermen and common council. They never had any meeting, so far as any record is shown. Now, I ask your recollection, Mr. McCleary.

A. Well, sir; do you want my recollection officially or my recollection individually?

Q. I did not know that you had an official recollection.

A. I know a great many things beyond what is recorded.

Q. I want your recollection beyond what is recorded.

A. My impression is that a warrant was issued by the provost

marshal, making each alderman a sort of recruiting officer. There must be some better evidence of that than my recollection.

Q. That is all I have got now, sir; I deal with what I have got. Now, to come back to the question, (whether upon your official or individual recollection,) did that committee dissolve and stop its work?

34 A. That I cannot testify to, sir.

Q. Don't you know that it came to an end?

A. It must have come to an end when the year ended.

Q. Didn't it come to an end and dissolve previous to that time?

A. I do not know that it did. When the municipal year ceased that committee died with it. I am ignorant entirely of the meetings of that committee, or when they dissolved.

Q. You do not know that the committee ceased to go on recruiting, and that it was taken up by each alderman?

A. I had nothing to do with the meetings, or any meetings for recruiting. I know nothing about their action. When I state that I had this impression that is all I can tell about it.

Q. Didn't other committees cease to act when they became recruiting officers?

A. I do not know, sir.

Q. Did you not know, sir, that the aldermen were paying $125 per man for recruiting?

A. No, sir.

Q. Hear nothing of that sort, sir, from them?

A. I don't think that I did, sir. I had nothing to do with them. I only met with the board as they met at their general meetings.

Q. You were clerk of the board of aldermen?

35 A. Yes, sir.

Q. Of which the mayor is presiding officer?

A. When is he present, sir.

Q. Now, sir, were there any meetings of the mayor and board of aldermen not recorded in that book?

A. Not for business purposes.

Q. Were there any meetings of the mayor and board of aldermen that are not recorded?

A. I know nothing about any, sir. If there had been, and I had been present, I should have recorded their doings.

Q. Do you mean to say that there were none?

A. Not to my knowledge, sir; not for business. He may have frequently called the aldermen into his room for consultation.

Q. Into his private room?

A. Yes, sir.

Q. For consultation?

A. Yes, sir.

Q. From the general room into the private room?

A. Yes, sir.

Q. Were not secret sessions had then? Was not that the purpose?

A. No business was transacted at these sessions.

Q. How do you know?

A. Because we cannot transact any business in that way. The sessions must be public.

36 Q. But as a board of recruiting could they transact any business?

A. I don't know anything about that.

Q. Did you not know that that committee had such sessions, and transacted business as a board of recruiting?

A. I did not know, because I was not present.

Q. When you say that they could not have transacted business, you mean as a component part of the city council?

A. Either as a component part of the city council or as a board of aldermen. Yes, sir.

Q. Why not?

A. It is so expressed in the city charter. It is stated that their sessions must be public.

Q. They had private sessions for some purpose?

A. So you say.

Q. Don't you say so?

A. No, sir.

Q. I thought you said they did for purposes of consultation?

A. I don't call that a session.

Q. We wont quarrel about words, Mr. witness. They got together in the mayor's private room. Do you mean to say that they never did this for business?

A. For consultation, probably.

Q. Consultation on what?

37 A. Consultation on any matters they chose to talk about.

Q. Do you not know that it was for business purposes?

A. Probably more or less concerning business.

Q. Now, sir, do you not know of this custom: That when it is necessary for things to be done by the board of aldermen which had best not be published until they are consummated, do they not have private meetings? Let me illustrate what I mean: Suppose they are going to agree upon a sum for recruits; that they would give five hundred dollars, but they wanted to get them as cheap as they could, might they not, did they not, have meetings to make an agreement, and then make no public record of it?

A. I should think it was hardly possible, sir.

Clifford, J. It is not necessary to answer what is possible. You will answer what you know. You speak from your knowledge.

Q. Do you not know, sir, that meetings were notified for the aldermen to come together when they had no public meetings?

A. Yes, sir; that is often done. The mayor notifies the aldermen that he wishes to see them in his private room.

38 Q. Times when they would not come together in the public room and then retire for consultation on business, but when the mayor would notify a meeting to be in his private room?

A. I don't understand that to be a meeting exactly—he wished to see them.

Q. With your leave, sir, I do not ask for your understanding.
A. That is the fact.
Q. How many of them are there?
A. There are twelve.
Q. Wasn't that upon business? Were not these business meetings of some kind?
A. I do not know, sir; I was not present.
Q. Had you any reason to suppose they were for other than this?
A. No, sir.
Q. Business that should not be made public?
A. I do not know, sir.
Q. How frequently was that done during the time the recruiting went on?
A. I do not know, sir.
Q. Very frequently?
A. Yes, sir; they might possibly have been once a week.
Q. Wasn't it oftener during that year, 1864, than at any other time?
A. I do not know that it was.
39 Q. What?
A. I do not know that it was.
Q. Do you not believe that it was?
A. I should think it probable that it might have been.
Q. Was it not so, sir? How was it?
A. I don't know, sir.
Q. Do you not know from your recollection that some of these meetings were about recruitment?
A. No, sir.
Q. Who was the clerk that was in at these meetings?
A. I don't know that any clerk was there.
Q. Wasn't the mayor's private clerk in his private room, when these meetings were called?
A. I do not know, sir.
Q. Was not that his usual place?
A. I think his department was separate from the mayor's.
Q. Don't you know of his being present when these meetings were called?
A. No, sir.

No cross-examination.

Major Wm. Rogers was called, and sworn, and testified, as follows:

Testimony of Maj. Wm. Rogers.

By plaintiff's counsel:

Q. You were ass't adj. general of the State in 1864?
40 A. Yes, sir.
Q. Were you detailed to aid the commission of Gov. lifford and Gov. Andrew?

A. I was.

Q. Whether you had the general supervision of the clerical labor?

A. Yes, sir.

Q. We have had a paper here that we called a large list, and a marine list, and a naval list. By whom were these lists presented to your commission?

A. I do not know, sir, personally. The details of the work were under the charge of Mr. Sanderson, and he would naturally receive all these papers?

Q. Were they before the commission, sir?

A. This large list was. This paper looks as if it were prepared by Mr. Sanderson.

Q. Yes, sir; the marine list I meant to have handed you, sir; here it is—the marine list.

[Large list marked "1;" marine list marked "2;" "3," marked on the credits, and "4" on the other.]

A. The larger list I remember; there was also a smaller list.

Q. I will ask you about that in a moment. The larger list was before the commission?

A. Yes, sir.

41 Q. Didn't the city of Boston send a smaller list?

A. There was a smaller list before the commission.

Q. Who presented that, sir?

A. I do not know who presented it.

Q. You remember about how many names it contained?

A. It was a much smaller number than the other.

Q. Whether that list was in such a condition as to allow any of the names to be credited? And if so, how many?

A. I do not remember about that.

Q. Can you tell at all how many?

A. No, sir; I don't remember particularly about the state of the list, as these matters of detail were left entirely to Mr. Sanderson.

Q. What was done with the small list?

A. It was finally withdrawn by direction of the mayor, I think.

Q. Were you present at any conversation between Gov. Andrew and the mayor?

A. I was present at a conversation between Gov. Clifford and the mayor.

Q. When was that?

A. That was just previous to making up the final report of the commission.

Q. When?

A. About September; early in Sept.

Q. What claim did the mayor make about these credits, and

42 what was answered to it?

A. At that time it was a subject of uncertainty with the commissioners which list the city of Boston desired to have allowed.

Q. That is the smaller list, or this list?

A. And Gov. Clifford wished to ascertain from the mayor which list he would have presented for allowance. If one was presented, the other must be withdrawn.

Q. Well, what did the mayor say to that?
A. I don't remember, sir, the conversation.
Q. The substance of it?
A. The final decision was, that the large list was presented and allowed.
Q. Presented by the mayor?
A. By the mayor.
Q. As the list of the city of Boston?
A. " " " " " " "
Q. And the small list before presented was withdrawn?
A. Was withdrawn; yes, sir.
Q. Upon that presentation by the mayor was the large list allowed?
A. It was, sir.
Q. Was it sworn to at that time, do you remember?
A. I do not remember; it must have been; otherwise it would not have been allowed.
43 Q. Well, as we have had some speaking about the small list; the large list was the Burrill list, was it not?
A. Yes, sir.
Defendant. The Burrill list seems to be something that the witness does not testify to.
Pl'ff. Did you not know, sir, that Mr. Burrill had something to do with one of the lists?
A. Yes, sir, from conversation with the mayor.
Q. And which was the Burrill list?
A. The large list.
Q. The one you have before you?
A. Yes, sir.
Q. And whose was the smaller list? Where did that come from?
A. That, as I said before, I do not know who presented, but it purported to be a city list.
Q. Had the city anything to do with the preparation of that list?
A. No, sir.
Q. Won't you state the course of business, how these were allowed?
A. A circular was issued to all the towns and cities, asking them to bring in their lists for allowance. In consequence of that circular lists were brought in from the different towns and cities which claimed any naval credits. Mr. Sanderson had charge of
44 them, and made the examinations, and upon his examination the allowances were made. There was quite a large force of clerks at work under Mr. Sanderson's charge.

Cross-examination.

By counsel for defendant:
Q. The lists were made, as I understand you, a list of all the names upon the receiving ship in the first instance?
A. I do not know about that, sir; the lists which were brought before the commission were lists sent in by the several cities and towns.

Q. These were examined, you say, by Mr. Sanderson. What examination was made by these lists, and by what were they examined?

A. Well, I don't know that I recollect distinctly. I think it was from lists taken from the receiving ship.

Q. Do you not know that in the first instance somebody had a list of all the enlistments at the receiving ship, and that then in answer to this certain answers were sent in by the cities and towns, and that the answers were examined to see whether these also were on the list of the receiving ship?

A. I think it was so, sir; and also part of the examination was to ascertain to what city or town each man should be al-
45 lowed.

Q. Was there anything outside of the lists to ascertain?

A. I think not, sir.

Q. Nothing, except the evidence furnished by the lists themselves—the list from the receiving ship compared with the lists from the different towns and cities of the Commonwealth? And the only examination was to see that the names were borne upon the list of all the names from the receiving ship?

A. Yes, sir; I think that was correct.

Q. And it being found to be correct, it was minuted—some memorandum was made?

A. Yes, sir.

Q. That it was borne upon the general list as coming from Boston?

A. Yes, sir.

Q. And no other means was taken to ascertain the residence of any particular person in Boston, or in any other city, except to compare the list with the list of all the names at the receiving ship?

A. No, sir.

Q. That is, you didn't go outside to ascertain that a man lived in Boston, or anywhere else?

A. No, sir.

Q. Now was this smaller list—you have spoken of a smaller
46 list of the city officials—you say it was withdrawn. Do you know, of your own knowledge, what was done with it?

A. I do not know who actually took it away.

Q. Except that it was withdrawn by somebody?

A. Yes, sir.

Q. When you say that it was withdrawn by the city or city officials, that was mere inference?

A. It was withdrawn from competition.

Q. But who took it, or who withdrew it, you have no recollection?

A. Who carried it away from the room I do not know.

Q. And so you know it was taken away from the room?

A. I do not recollect now, sir, distinctly.

Q. All you know is, that you have not seen it since making the records of the commission?

A. Yes, sir.

Q. Now, can you tell me—Brother Butler asked you if it was still

incomplete. In answer to Bro. Butler I understand you to say it was incomplete?

A. No, sir.

Q. What did you say?

A. I said that I didn't recollect.

Q. Then, sir, have you any recollection whether that list was incomplete or not?

47 A. I have no recollection of its being incomplete. My present impression is that it must have been in form, otherwise no question could have arisen.

Q. Whether that was not, according to your recollection, in perfect condition to be allowed, provided the mayor had made oath to it?

The Court. We are inclined to think that at the present moment you have not made a proper foundation for that. Mr. Burrill will be able to show better where it was.

Q. Then the allowance of the larger list depended upon this, and nothing else, the claim to be made by the mayor and city authorities?

A. It depended entirely upon which list the city relied upon.

Q. That is, neither list could be allowed except upon the claim made by the city officials or by the mayor?

A. Yes, sir.

Q. And the claim being made, the list was allowed?

A. Yes, sir.

Q. And that was the only thing necessary to the acceptanee of the larger list? A different list might have been shown, but the larger list could not have been allowed, so far as you know?

A. There being two lists before the commission, it was impossible to act upon either until it was known which list the city adopted.

Q. That is, it depended upon a claim from those representing the city?

48 A. Yes, sir.

Q. And no other examination was made in regard to them, except in comparing it with all the lists from the receiving ship, and seeing that the names borne upon these lists were borne upon the larger list?

A. And that the men belonged to Boston.

Q. Was there anything done to ascertain, except that the names were common to both lists?

A. No.

Q. Was that ascertaining whether they really belonged to Boston, dependent upon the claim of the city, and that they were borne upon the receiving ship's records?

A. Yes, sir.

Direct examination.

By plaintiff:

Q. Whether or not the commission did not take the oath of the mayor that these men did belong in Boston as evidence, and then,

Q. These were examined, you say, by Mr. Sanderson. What examination was made by these lists, and by what were they examined?

A. Well, I don't know that I recollect distinctly. I think it was from lists taken from the receiving ship.

Q. Do you not know that in the first instance somebody had a list of all the enlistments at the receiving ship, and that then in answer to this certain answers were sent in by the cities and towns, and that the answers were examined to see whether these also were on the list of the receiving ship?

A. I think it was so, sir; and also part of the examination was to ascertain to what city or town each man should be al-
45 lowed.

Q. Was there anything outside of the lists to ascertain?

A. I think not, sir.

Q. Nothing, except the evidence furnished by the lists themselves—the list from the receiving ship compared with the lists from the different towns and cities of the Commonwealth? And the only examination was to see that the names were borne upon the list of all the names from the receiving ship?

A. Yes, sir; I think that was correct.

Q. And it being found to be correct, it was minuted—some memorandum was made?

A. Yes, sir.

Q. That it was borne upon the general list as coming from Boston?

A. Yes, sir.

Q. And no other means was taken to ascertain the residence of any particular person in Boston, or in any other city, except to compare the list with the list of all the names at the receiving ship?

A. No, sir.

Q. That is, you didn't go outside to ascertain that a man lived in Boston, or anywhere else?

A. No, sir.

Q. Now was this smaller list—you have spoken of a smaller
46 list of the city officials—you say it was withdrawn. Do you know, of your own knowledge, what was done with it?

A. I do not know who actually took it away.

Q. Except that it was withdrawn by somebody?

A. Yes, sir.

Q. When you say that it was withdrawn by the city or city officials, that was mere inference?

A. It was withdrawn from competition.

Q. But who took it, or who withdrew it, you have no recollection?

A. Who carried it away from the room I do not know.

Q. And so you know it was taken away from the room?

A. I do not recollect now, sir, distinctly.

Q. All you know is, that you have not seen it since making the records of the commission?

A. Yes, sir.

Q. Now, can you tell me—Brother Butler asked you if it was still

incomplete. In answer to Bro. Butler I understand you to say it was incomplete?

A. No, sir.

Q. What did you say?

A. I said that I didn't recollect.

Q. Then, sir, have you any recollection whether that list was incomplete or not?

47 A. I have no recollection of its being incomplete. My present impression is that it must have been in form, otherwise no question could have arisen.

Q. Whether that was not, according to your recollection, in perfect condition to be allowed, provided the mayor had made oath to it?

The Court. We are inclined to think that at the present moment you have not made a proper foundation for that. Mr. Burrill will be able to show better where it was.

Q. Then the allowance of the larger list depended upon this, and nothing else, the claim to be made by the mayor and city authorities?

A. It depended entirely upon which list the city relied upon.

Q. That is, neither list could be allowed except upon the claim made by the city officials or by the mayor?

A. Yes, sir.

Q. And the claim being made, the list was allowed?

A. Yes, sir.

Q. And that was the only thing necessary to the acceptanee of the larger list? A different list might have been shown, but the larger list could not have been allowed, so far as you know?

A. There being two lists before the commission, it was impossible to act upon either until it was known which list the city adopted.

Q. That is, it depended upon a claim from those representing the city?

48 A. Yes, sir.

Q. And no other examination was made in regard to them, except in comparing it with all the lists from the receiving ship, and seeing that the names borne upon these lists were borne upon the larger list?

A. And that the men belonged to Boston.

Q. Was there anything done to ascertain, except that the names were common to both lists?

A. No.

Q. Was that ascertaining whether they really belonged to Boston, dependent upon the claim of the city, and that they were borne upon the receiving ship's records?

A. Yes, sir.

Direct examination.

By plaintiff:

Q. Whether or not the commission did not take the oath of the mayor that these men did belong in Boston as evidence, and then,

after the oath of the mayor, compared the lists with those at the receiving ship, and thus ascertain whether the men that the mayor swore to were on them?

A. The oath of the mayor or other official was necessasy to the acceptance of the list.

Q. That is this oath, "I, Frederick W. Lincoln, jr., mayor of the city of Boston, hereby certify that the above-named men are, to the best of my knowledge and belief, legal citizens of said city, and
49 liable to military duty therein;" and that being sworn, was taken before the commission as evidence, and this was compared with the receiving ship records to see if they were actually serving as sailors of the United States?

By the Court:

State how that fact was.

A. I do not know that any evidence was taken with regard to the residence, except what was borne upon the lists of the receiving ship; but the oath of the mayor, or some other official of the city, was necessary in order to the acceptance of the lists at all by the commission.

Q. Didn't you take the oath of the mayor? Didn't you require him to swear that they were citizens of Boston?

A. That they were, to the best of his knowledge.

Q. To the best of his knowledge, of course; that is all any man can swear to.

A. Yes, sir.

Q. Did you look for any other evidence?

A. The evidence at the receiving ship.

Q. That is, you saw if that agreed with the fact of the place where the man enlisted from?

A. After looking on the lists of the receiving ship to see if the residence there given agreed with the list handed in by the city and verified by the oath.

50 Ex-Gov. John H. Clifford was called and sworn, and testified as follows:

Clifford.

Plaintiff ·

Q. Gov. Clifford, we have learned that you were appointed upon a commission with Gov. Andrew to ascertain whether certain naval credits were credited to the city of Boston. That was so, was it?

A. Yes, sir.

Q. Serving on that commission, did the city of Boston present a list which they claimed to have allowed?

A. My recollection of the whole matter, if you will permit me to state, I can give in a very few words, subject of course to any inquiries you may desire to make. I accepted the commission from the Secretary of War, in connection with Gov. Andrew, who was re-

garded as representing the Commonwealth, so far as the United States and the Commonwealth had any antagonistic interests. Gov. Andrew was, unfortunately, quite ill at the commencement of the examination, and unable to attend in August and back into July. At all events, I know that in the dog-days we went on with a large clerical force; and having issued circulars to all the cities and towns of the Commonwealth to present their claims for the persons en-
51 listed from their respective municipalities, with a view to an allowance to them upon enlistments into the army, that is, with a view to avoiding the draft which was portending, I attended quite constantly, though of course the details were made by the clerks. Major Rogers was detailed as a sort of supervisory clerk, and Mr. Sanderson attended to the details, and had a large corps to attend to transcribing the lists that came in from different quarters. My recollection of this is, that some time in the course of the examination a list was submitted to me, containing—I should not like to undertake to be accurate as to the number contained, but my impression is about 2,000 names, claimed as enlisted in the naval service, to which the city were entitled to credit by this commission. It was accompanied with a suggestion that that was not the entire list which the city of Boston claimed, and that Judge Sanger desired to see me in reference to it. He was the only person whom I saw with reference to it. He had an interview with me for some days, during which the commission was under the necessity of closing their examination; and I said to him: "Here is the list from the city of Boston. Of course so long as that remains we can consider no other. If any other is made, it must be made by the govern-
52 ment of the city, by the mayor and aldermen." And I think I addressed a note to him, suggesting that if any changes should be made it should come from the proper city authorities, and that it must be made within a certain time. I think I suggested a specific hour of the day by which it should be received, if any new claim was to be made by the city. Hereupon an interview was had between Mr. Sanger and the mayor and myself, (I do not recollect that any others, with the exception perhaps of Maj. Rogers, were present,) in which I distinctly and decisively stated that if any further claim was to be made, it must be made from the board of aldermen; that as commissioners we could consider no claim made from any other source. And thereupon the larger list, as it was called—the list, I suppose, which I have before me here—was presented, and the other list was withdrawn from the consideration of the commissioners.

Q. By whom?

A. Withdrawn from the consideration of the commissioners entirely; and the allowances were made upon the large list.

Q. The large list had been verified; had the smaller one?

53 A. I am unable to say. I have no doubt that it had, otherwise we should not have used it.

Q. Which was presented first, the large list, or the smaller one?

A. I am unable to say. When my attention was first called to the matter, both were there. If one was presented first, it must have

been the smaller one, as the suggestion was made that there were more names to which the city was entitled.

Q. You say that in response to your note Judge Sanger came; anybody else?

A. My best recollection is, that I suggested to Mr. Sanger that the mayor should be called upon to determine whether he desired to make a new claim; whether a new list was to be presented by him; if it was, we would consider and pass upon it; if it was not presented by the mayor, we should of course give no consideration to it.

Q. Thereupon the mayor came and made an election to present that list?

A. Yes, sir.

Q. Which you allowed?

A. Yes, sir.

Q. Will you look at that, and see if that is the envelope in which the letter was sent?

A. Well, that of course, I am unable to say. That is not my hand-writing; it appears to be the hand-writing of Mr. Rogers.

54 I think I remember, however, quite distinctly, that I wrote the letter in Mr. Roger's presence. I am quite sure that I wrote it at the State House, in the room which we occupied, and it is quite probable that I handed it to him to put into an envelope.

Q. Whether or not the letter was written in the presence of mayor Lincoln as well?

A. I have no recollection of that fact.

Q. Do you remember whether you wrote a letter to Mr. Lincoln or not?

A. I do not know. I have no recollection of seeing Mr. Lincoln, until I saw him with Mr. Sanger. It may be that I did. I cannot recollect any interview.

Cross-examination.

By defendant:

Q. You spoke of the clerical work being done by Mr. Sanderson, and also by Mr. Rogers; what was that clerical work?

A. It was the examination of all the claims made by the different municipalities, and the verification of those claims by resorting to the lists of the receiving ship, and the dertermination of the question of residence, and that the commission might understand whether the claim of each town was right or not.

Q. That is the lists of enlistment at the receiving ship were

55 obtained by this clerical force?

A. Certainly.

Q. Then, after your circular to the different towns and their sending in their claims, an examination was made of the names sent in, to ascertain if the names upon the claims were upon the lists of the receiving ship?

A. Certainly.

Q. And so, whether there was any contradiction in the places of residence?

A. Yes, sir.

Q. And no other examination was made, except by the taking of name, and the comparison with those on the lists of the receiving ship?

A. I recollect very well that there was a conflict of claims from different towns, and that often through the different districts an allowance had been made to certain towns of certain names; the selectmen of other towns claimed that these men belonged to them, and were residents of their towns; we had a great many of this description, and in addition to that, there were persons whose only residence was at the place of enlistment, as appeared from the enlistment; and there was a large portion of these apportioned among the different towns.

Q. Whether any evidence outside the evidence on the com-
56 parison of the claims with the lists of the receiving ship, coming to the best conclusion you made by the comparison of evidence, was gone into?

A. I have no recollection.

Q. But, as I understand you, the verification by the mayor of the claim—by the mayor or some official in behalf of the city of Boston—was an absolute necessity?

A. Certainly.

Q. And then the small list as I understand you was probably authenticated. [Question withdrawn.]

Testimony of Maj. Rogers, (recalled.)

By pl'ff:

Q. You have heard Gov. Clifford speak of a letter sent to Mr. Sanger. Did you see that letter written?

A. I think I did, sir.

Q. Did you direct the envelope?

A. Yes, sir.

Q. Have you it in your hand, in your own handwriting?

A. Yes, sir.

Q. Won't you read what you find there?

A. [Reading.] "Hon. Geo. P. Sanger." "By the politeness of Mayor Lincoln."

Q. Was it sent by Mayor Lincoln?

A. My impression is that it was. My recollection, however, is rather indistinct.

Q. You wrote there, "By the politeness of Mayor Lincoln"?
57 A. That was written at the time.

Testimony of Francis E. Sanderson.

By pl'ff:

Q. We have learned from Gov. Clifford that you were the clerk of this commission, having charge of the details. Have you ever seen the large list, No. 1, lying there before you?

A. Yes, sir.

Q. From whom did that come into your possession?

A. The first time I ever saw it, I obtained it from the hands of Gov. Andrew.

Q. That purports to be a list from the city of Boston. Was there another list from the city of Boston?

A. There was a smaller list.

Q. I do not mean the marine list. Was there another list?

A. The city of Boston presented a list.

Q. What became of that list?

A. That list was withdrawn, sir, from the commission.

Q. By whom?

A. I received my instructions from Maj. Rogers.

Q. Were you present when Mayor Lincoln was present?

A. No, sir; I was not.

58 Q. When you received instructions were you told by whose order it was withdrawn? [Question withdrawn.] Was it withdrawn before or after that large list was allowed or examined?

A. Before they were credited.

Q. Had the other list been examined before that was withdrawn?

A. There had been a comparison made of both lists.

Q. With what?

A. With the lists of the receiving ship.

Q. For what purpose?

A. For the purpose of ascertaining what proportion of the men claimed by the towns and cities of the Commonwealth were in the naval service.

Q. How did the small list compare with the receiving ship's?

A. They compared about the same usually in the claims of the towns and cities.

Q. That don't help me any.

A. About fifty per cent. of them were found in the naval service. About one-half agreed with the naval service.

Q. How did the large list agree—the Burrill list?

A. We found them all in the naval service.

Q. Were they all credited?

A. They were, sir.

59 Q. Whether that fact, that they could be credited, was made known to the city authorities before it was withdrawn?

A. I think they were aware of the fact, sir.

Q. What makes you think so, sir?

A. From a matter of conversation with the mayor.

Q. What did he say?

A. I think he asked, after we had examined the list, what proportion were credited by the commission.

Q. And you informed him as you have informed us?

A. Yes, sir.

Q. What did he say about withdrawing it?

A. Nothing said about withdrawing it.

Q. What did he say, sir?

A. This larger list was then brought up in our conversation.

Q. Won't you state that conversation, as near as you can, between you and the mayor?

A. I think he asked me what portion of the men would be claimed, if the larger list was presented, what proportion would be allowed by the commission.

Q. What did you tell him?

A. I told him that I thought they were to be nearly all allowed.

Q. What did he say, then?

60 A. Well, there was something said about who presented this claim, I know.

Q. Well, sir, state what it was.

A. He said it was not presented by the city of Boston.

Q. That is the large list?

A. Yes, sir.

Q. Who did he say did present it?

A. I don't know that anything was said in regard to it.

Q. How long before the large list was presented?

A. I cannot say, precisely.

Q. About when?

A. A few days after.

Q. Did he say anything about whether the smaller list, if it was allowed, would take the city out of the draft?

A. He said it would not be a sufficient number to take them out.

Q. What did he say about the larger one?

A. I asked him, I think, why he didn't present the larger list. He said I did not understand the facts of the case in connection with that.

Q. What else did he say?

A. He said if that should be presented by the city of Boston, there would be a large amount of money to be paid in some form or other.

61 Q. If the city of Boston presented the larger list, there would be a large amount of money to be paid?

A. Yes, sir.

Q. Did he say anything about trying to compromise with some one?

A. No, sir; he merely made this remark: That he would give all that he was worth to have the matter compromised.

Q. After this conversation, did the city of Boston present the larger list?

A. Yes, sir.

Q. Did you learn at that time that that largest list was a list of Mr. Burrill's procurement?

(Objected to).

The Court. We think that would hardly do. You will probably be able to identify in some other mode.

By pl'ff:

Q. Is that the list to which the mayor referred?

A. I suppose it was, sir.

Q. And you understood him to be referring to that large list?

A. Yes, sir.

Q. Did you learn from the mayor that Mr. Burrill had anything to do with it?

A. He never mentioned Mr. Burrill's name in connection with our conversation.

62 Q. Were you present when a letter was sent by Mr. Lincoln?

A. I saw the letter written.

Q. Who was present at that time?

A. I do not recollect, sir; I think Major Rogers was there in the room.

Q. Do you know whether Mr. Lincoln was present or not?

A. No, sir; I do not think he was, when the letter was written; I didn't see him.

Q. Was he there when it was sent?

A. I have no knowledge of that sort.

Q. Do you remember anything else between Mayor Lincoln and yourself?

A. No sir.

Q. Do you remember anything of the conversation when the letter was written?

A. I know there was a letter written to Mayor Lincoln; I saw the letter before it was written.

Q. I am now speaking of the letter to Judge Sanger.

A. The one I have reference to; I was there when it was written to Judge Sanger.

Q. How long was this before the time when the commission was closed?

A. I should think it was the day before; I think it was on
63 the 4th day of September, if I recollect right.

Q. Up to that time, had the larger list been presented?

A. No, sir.

Q. Then, on the day before the draft was to begin, they sent this letter to Judge Sanger?

A. Yes, sir.

Q. Were you there when the mayor came about it?

A. No, sir; I was not. I might have been there, but I didn't know what was going on.

Q. I understood you that the commission was closed the day after the letter was written, the day after the conversation.

A. That is my impression, sir.

Q. We have referred to two dates, one the date of the conversation you had with Mayor Lincoln; that was a short time before the closing of the commission?

A. Yes, sir.

Q. Now, was the commission to be closed on the day the letter was written, or on the day after?

A. It was the day after, so far as I recollect.

No cross-examination.

64 *Charles Burrill* vs. *City of Boston.—Second day.*

Testimony of George P. Sanger, George W. Warren, Charles F. Dana, James G. Macaulay, Charles Burrill.

U. S. Circuit Court.

CHARLES BURRILL
vs.
CITY OF BOSTON.

TUESDAY, *Sept. 3d, '67.*

The court came in at 10 o'clock, and the examination of witnesses on the part of the pl'ff was resumed.

Testimony of Geo. P. Sanger.

By Mr. Butler:

Q. Judge Sanger, in the year 1864 did Mr. Burrill call on you as counsel about this matter with the city of Boston?

A. He did, sir.

Q. As such counsel, did you visit the commissioners with his list?

A. I did, sir; I did not precisely visit them with the list. I did not carry the list in person to the commissioners, but I conferred with the commissioners in reference to the list, which was

65 before the commissioners.

Q. The list had been sent in before?

A. Yes, sir.

Q. Did you receive any communication as to what was to be done with the list?

A. I received a communication from Gov. Clifford in reference to the list.

Q. Was it contained in that envelope, sir?

(Envelope exhibited.)

A. It was.

Q. Did you have the letter at the time this case was tried before?

A. Yes, sir; the letter itself was present at the trial at Dedham. I produced it at that time.

Q. State, if you can, what day it was you received that letter.

A. It was either the 2d or 3d of Sept., if I recollect right.

Q. Who brought it to you?

A. I cannot tell; I found it on my office table, at 4 Court street, between 3 and 4 o'clock in the afternoon.

Q. Do you remember what day of the week it was?

A. It was the latter part of the week, either Friday or Saturday, if I recollect right.

Q. Whether you can recollect it in connection with another

66 date? Whether the day on which the draft was to take place, the 5th of Sept., was not the next Monday?

A. The draft was impending; was about to take place.

Q. What were the contents of that letter as near as you can state them?

The Court. Any objection?

Mr. Abbott. We understand the gentlemen cannot find the letter.

A. I have not seen the letter since I saw it at Dedham, at the trial.

Q. You produced it at the other trial?

A. I produced it at the other trial. I recollect, I think, the substance of the letter. It was this: The first paragraph of the letter had reference to a conversation that I had had with Gov. Clifford; and it said that in that conversation, when the list was spoken of—the larger list—there were two lists, the aldermen's, so called, and Mr. Burrill's list, the commissioner. Gov. Clifford, supposed that the larger list was adopted by the city, the Burrill list; but in conversation with Mayor Lincoln, held that day, he found that the city did not adopt the larger list.

Q. This is what was in the letter?

A. This is what was in the letter: That no list could be adopted unless it was claimed by the city, and therefore, if the larger
67 list was to be adopted, the city must claim it. He requested that I should see the mayor, and that some conclusion should be arrived at before 5 o'clock that afternoon. I think it said in the letter that Mayor Lincoln would hand me the letter in person. That was the substance of the letter.

Q. You say you had a conversation prior to this with Gov. Clifford about the large list. What was that?

A. I stated to him the substance of the arrangement between Mr. Burrill and the city, and that this was presented in behalf of the city.

Q. Presented by Mr. Burrill in behalf of the city?

A. Presented by Mr. Burrill in behalf of the city.

Q. And then, if I understand you, the letter informed you that the mayor had said that the city did not adopt the list?

A. Yes, sir.

Q. And that, if they did adopt it, he wished to be informed of it?

A. Yes, sir.

Q. Did you see the mayor?

A. I did.

Q. Where did you find him?

A. At what was then the City Hall, at the corner of Bedford and Chauncey sts.

Q. What conversation took place between you and the mayor on the subject of this large list?

68 A. The mayor was present, Alderman Norcross was present, one or two other aldermen, and Mr. Healy, city solicitor. There was a conversation with reference to the adoption of the larger list, and I, as attorney for Mr. Burrill, urged them to adopt the larger list, under their contract with Mr. Burrill.

Q. State the conversation as nearly as you can, in substance.

A. The substance of what I said in favor of the presentation of the claim was, that it would relieve the city from the draft that was then impending; that I knew of the great anxiety and the great terror that was felt in different parts of the city in reference to the draft that was then coming, in some wards, taking, it was said, substantially every man upon the rolls; and that I felt that the adoption of that list would be felt by the citizens as a relief from a great burden that was impending over them. That was admitted on the part of the city—on the part of the mayor and those who were present at that interview. It was objected that the credits were not what the contract was expected to produce; that it was expected to produce men to go into the service; men who had been detained as prisoners upon Johnson's Island; those were mentioned as some;
69 and that the object was to get effective strength into the army.

Q. Who made that objection?

A. I think Alderman Norcross spoke of that particularly.

Q. Anybody else but Alderman Norcross?

A. I don't recollect that any one else urged that. It was not dissented to by others. I don't recollect that any other besides Alderman Norcross spoke of that.

Q. Did the mayor speak of it?

A. I cannot say that he did not, but I have no recollection that he did. My recollection is that Alderman Norcross spoke of it. I know that Alderman Norcross had said that to me at one or two interviews I had had in reference to the matter.

Q. You had had interviews with the mayor and some of the aldermen before?

A. I had had interviews with the mayor, and some of the aldermen, Alderman Nash and Alderman Norcross, particularly, before.

Q. What reply did you make to that?

A. The substance of what was said simply in regard to that was, that the efforts of the citizens to get volunteers into the army need not be remitted in consequence of the city being out of the
70 draft; that they might well go on and continue their ward subscriptions, if they pleased, and get men into the army, but that the adoption of these credits would save the city from the draft and give it the credit of being a city out of the draft, and relieve the citizens from this apprehension that was upon them. That was a matter special with me, because I happened to know by pretty general conversation with persons from different parts of the city as to the feeling in regard to it.

Q. What was then said finally about it?

A. They came to no decision while I was present. They said they would confer together and decide what to do. They came to no decision while I was present. I left them together.

Q. Did you afterwards see the mayor?

A. Yes, sir.

Q. Do you remember the date?

A. I should say it was the 7th or 8th of September. It was dur-

ing the following week. I should say as late as Thursday, Friday or Saturday.

Q. Did you have any conversation with him as to any conclusion he had come to?

A. At that time it was known, and it was in coversation, that the city had presented this list from Mr. Burrill, or, in other words, that the larger list had been adopted by the commissioners;

71 and the question then was as to the number of credits that were given, and whether the city would require of Mr. Burrill the proof of the allowance of the credits that the contract called for. I have not read the contract from that time to this, but if I recollect right, such a sum was to be paid upon certain proof being presented.

Q. A certificate?

A. Yes, sir; and the mayor then gave me the amounts that were allowed, so many one year's men, so many two year's men, so many three years' men, which being reduced to the unit of service, three years' men, made 5,222⅓, if I recollect right.

Q. Just upon that, I want to ask you with a little more particularity. The contract, as we have it here, says, (reading,) "The money to be paid said Burrill whenever he presents to me the official certificate from the proper authorities, showing that said credits have been given." You asked him, if I understand you, if he required that certificate?

A. Yes, sir.

Q. What answer did he make to that?

A. He said there was no necessity of producing that, as they knew the credits had been made. He would not require that certificate.

72 Q. Now, if you will please to go back to the time when you were in the presence of the mayor and some of the aldermen, and the legal adviser of the city, after the acceptance of this contract, was there anything said, in that discussion, about what it would cost if they accepted that list?

A. Yes, sir; it was objected, too, that the sum paid would be very large.

Q. What answer was made to that?

A. I don't recollect any particular answer, except that the equivalent that was rendered by taking the city out of the draft was worth the price.

Q. Was the contract, in the course of that conversation, referred to? Was it spoken of as the Burrill claim, or the Burrill contract?

A. I cannot say that it was spoken of in so many words as "Burrill's claim," or "Burrill's contract," but I was there acting for Mr. Burrill, under his contract, and only under that contract.

Q. It was known what you were there for, and you came there under that letter?

A. I came there under that letter, and handed that letter in, and stated the substance of it, and read it to the parties who were pres-

ent, and I think the mayor told me then that he left it upon my table.

Q. Perhaps your recollection will be refreshed by seeing
73 the envelope and the memorandum upon it.

A. Independent of this, (memorandum, "Politeness of Mayor Lincoln,") I should say so. I found it upon my table, I should say, between 3 and 4 in the afternoon. The decision would have to be arrived at and communicated at the State House by 5 o'clock that evening.

Q. Now, I wish to ask you this: The mayor was there ; Aldermen Nash and Norcross were there ; the very able city solicitor was there ; and you had a discussion as to the adoption of this contract?

Mr. Curtis. No.

Mr. Butler. As to the adoption of these credits under that contract?

Mr. Curtis. As to the adoption of this list.

Mr. Butler. As to the adoption of this list. Did anybody there venture to deny that there was authority on the part of the mayor to make it, or that it had been properly made?

Mr. Curtis. I object to the question.

Mr. Butler. What is the ground of your objection?

Mr. Curtis. That it is a leading question, and puts words into the witness's mouth.

74 Mr. Butler. Upon that, I prefer to say a single word. How it puts words into the witness's mouth, I don't know. He will say that somebody ventured or that nobody ventured; which way he will answer I don't know. I ask him whether anybody ventured to do a certain thing. He may say that they did or did not. I do not see the "leading' in the question.. I should think it was a hazardous "venture."

The Court. We think the question was leading. You must vary the form.

Q. When you were there as attorney for Mr. Burrill, a full discussion took place in regard to the expense of the Burrill list, in the presence of the mayor and some of the aldermen and of the able city solicitor. State whether, in that discussion, any one of all these persons, and if either, which, ventured to deny the authority of the mayor to make the contract, or the authority of the city to make it.

The Court. That is still leading. That does not vary the form of the question.

Mr. Butler. I did not intend to vary the form.

Mr. Paine. I suppose my brother understood your honor as I did, to request him to repeat the question.

75 Mr. Butler. I so understood it, or I should not have repeated it.

The Court. The remark of the Court was that it must be varied in form.

Q. Now, state whether anybody denied the authority; and if so, who?

The Court. State whether anything was said upon the subject; and if so, what?

A. Nothing was said upon the authority of the city to make the contract.

The Court. It cannot be stronger than that, "Nothing was said." It is simply driving the nail home.

Q. Was anything said upon the authority of the mayor to make the contract?

A. Nothing.

Q. Was there anything said as to whether Burrill had or had not performed his part of the contract?

A. Not in reference to the procuring of these credits. The objection was, that what they understood by the contract was, to produce men.

Q. Rebel prisoners?

A. Yes, sir. So far as that may be considered as saying he did not perform his part of the contract, so far it was said.

Q. And that was said by Alderman Norcross?

A. I recollect him as saying that.

76 Q. I believe you said, Judge, that you had a conversation with Mr. Lincoln about this before?

A. Yes, sir. I had had more than one conversation with Mr. Lincoln, and with Mr. Alderman Nash and Alderman Norcross, at the City Hall, probably between the middle of July and the middle of August. I saw them not infrequently then. It was some time after Mr. Burrill went to Washington, and after he had returned, and before the commission had organized; after it was known that the commission was to be appointed, but before it had organized.

Q. Was the subject of this contract then discussed between you?

A. That was my only purpose in going, and the purpose for which I was sent for, certainly once, by the mayor. He sent for me, and when I went there, this was conversed about; it was the only matter of conversation.

Q. What was said then about it?

A. Substantially the same as at the last interview. That is, the objection was, in regard to the contract, that while Mr. Burrill was procuring credits, they supposed that he was procuring men.

77 Q. You say you were sent for in one of these interviews, and there were several of them. In any of these interviews, was any objection made to the authority to make the contract, either on the part of the city or the part of the mayor?

A. Nothing was said.

Q. Where did you have these meetings?

A. At the City Hall, corner of Bedford and Chauncey streets.

Q. But in what particular room?

A. In the mayor's room. The mayor's room, adjoining the aldermen's.

Q. What is called the mayor's private room?

A. The mayor's private room.

Q. Now, will you state whether the aldermen, with the mayor, were acting as a recruiting committee?

A. I cannot tell you.

Q. You do not know?

A. I don't know. I only know that I saw these gentlemen, and we had these conversations.

Q. Were the same gentlemen present each time, with the exception of the solicitor?

A. I don't recollect seeing the solicitor but once, and that was at the last interview, but the mayor and aldermen, Nash and Norcross, were apparently acting together.

Q. Did you see these three gentlemen every time when you
78 went there?

A. No, sir; not every time; sometimes I saw the mayor alone, sometimes the mayor and the two aldermen together, and sometimes the mayor and one alderman.

Q. At the time you were sent for, were the three together?

A. I cannot say. I recall the fact that I was sent for; recollect that from finding among some papers a note from the mayor requesting me to call.

Q. You have spoken in your testimony of a smaller list, which was before the commission, which was called the aldermen's list; was there anything said about that list at any one of those interviews?

A. Yes, sir.

Q. At which?

A. It was at several of the interviews, prior to the sitting of the commission, during July and August; at those interviews that I had at that time.

Q. What was said about this smaller list?

A. They spoke of the manner in which the list had been prepared; that they had sent through the wards, and got the persons that were in the navy, so far as they could find them.

Q. They themselves had sent through the wards?
79 A. They themselves had done it.

Q. Was anything further said about this smaller list at this last interview? Anything said about this being withdrawn, or that it had not been or could not be allowed?

A. Yes, sir; at the final conversation, when I went with this letter of Gov. Clifford, the distinct matter of discussion was which of the two should be adopted; because there could be but one list adopted, and the adoption of the larger list necessarily caused the exclusion of the smaller list.

Q. Was anything said as to why the smaller list could not be adopted?

A. The objection to that was the difference in the number, and that it was not sufficient to take the city out of the draft; and further than that, the manner in which it had been prepared was such that the commission would not be likely to allow it.

Q. You have told us you were counsel for Mr. Burrill during his performance or attempted performance of this contract?

A. I was from the 20th of June, some two or three weeks after the contract was made, he first spoke to me about it. I think it was the 20th of June that I first knew anything about the matter.

Q. I believe you brought the original suit?

80 A. Yes, sir.

Q. When did you first hear, in the course of your negotiations with the city, of any objection to the want of authority on the part of the mayor or on the part of the city to make the contract?

Mr. Abbott. Is that material?

Mr. Curtis. There is a good deal of this that we think cannot be material, but perhaps it better come in under our objection.

Q. I believe I have exhausted your memory as to the conversation. I now propose to call your attention to particular matters. Was there anything said in that last conversation as to the amount of money to be saved to the city by the adoption of this contract?

A. There was something said about the difference that we were paying for credits, $125, and the sums that individuals were paying for volunteers and substitutes.

Q. I would like that, sir.

A. The substance of it was, that at the most, a credit would cost $125, and that we were paying $400, $500, $600, $700, and sometimes $1,000 for men; that was the substance of that.

Cross-examination.

By Mr. Abbott:

Q. You spoke of finding among your papers a note from Mayor Lincoln, and going to see him; what was the date of that?

81 A. The 3d of August.

Q. After that, was the first interview you had with the mayor or with the mayor and Mr. Norcross?

A. Oh, no, sir; I had seen the mayor previous to that in reference to this matter, in the month of July.

Q. And you have no means of fixing the precise time when you saw him?

A. No, sir.

Q. Previous to this last of August, or just previous to the draft, whenever it might be, you had met the mayor, sometimes alone, sometimes with Alderman Norcross and Alderman Nash, and sometimes with one of them?

A. Yes, sir.

Q. Have you any means of telling how many times you had met them during the interval of time between July and September?

A. I should say that I was over to the City Hall at least half a dozen times.

Q. You have no means of accurately defining what took place at one rather than another interview—I mean previous to the last?

A. No, sir.

Q. But you give here substantially, as you recollect it, the result of all the interviews with the mayor alone, with the mayor and

82 one of the aldermen, and with the mayor and both the aldermen, in the testimony that you have given in reference to

these interviews before the last one, just previous, as you say, to the adoption of these credits?

A. Yes, sir.

Q. And the result of all that was, that it was claimed by somebody on the other side who was talking with you that this contract was in reference to gettting men and not in reference to giving credits; that was the result of all this conversation that took place before the last of Aug. or first of Sept., was it?

A. You speak of it as "the result;" there was a result—a claim that was made.

Q. And never given up by these gentlemen, or any of these gentlemen in these conversations?

A. No, sir; it was made very early, and it was made at the last interview, on the 2d or 3d of Sept.

Q. And in the last conversation, that is, immediately previous to what you understood was to be the draft, the talk, mainly on behalf of the city, as I understand, was from the present mayor, Mr. Norcross, then Alderman Norcross?

A. No; I should say not as to that particular matter; we were all in the room at the corner of Bedford and Chauncy streets.

83 Q. The claim was then made very distinctly and urged to you, was it not, and not denied by anybody, (assented to as far as silence could assent to it,) that this contract was made for the purpose of obtaining men and not credits?

A. That is what they expected to get, I believe.

Q. And it was said at the same time by Mr. Norcross, was it not, that it was expected under that contract to recruit men in the rebel service who had made up their minds to change and enter our service?

A. Yes, sir.

Q. And the objection made to the adoption of that list on the part of Alderman Norcross was that possibly it might affect the rights of the city, by using the list for a purpose for which the contract was never made?

A. I have no recollection that those words were used.

Q. I mean the substance.

A. Nor the substance of that argument; I know it was objected in reference to the contract, that the expectations were, that under it, men would be put into the army.

Q. And you on your part were urging the adoption of the list?

A. Yes, sir.

84 Q. And they were refusing to adopt it; substantially that was so?

A. They didn't say they would.

Q. They did not during all the interviews agree to adopt it, but you considered it necessary to urge it?

A. Yes, sir.

Q. And Mr. Norcross gave this as a reason in the course of the conversation, in answer to your arguments in favor of its adoption, against the adoption?

A. That was one reason.

Q. And in substance, was it not this: That the adoption might prejudice their rights in reference to that contract?

A. I have no recollection that that was said.

Q. In substance?

A. My answer is as to either exactly or in substance.

Q. In the course of the conversation, did you not urge this, in substance, in some form of words, that the lists should be adopted without prejudicing the rights of the city or either party one way or the other?

A. No, sir.

Q. You say Mr. Healy was there, did he take any part in the conversation?

A. Mr. Healy occasionally spoke; Mr. Healy was walking
85 up and down the room part of the time, I remember.

Q. Can you recollect anything he said as distinct from other parties?

A. No, sir, I don't recollect anything he said.

Q. In some form of words, did you not tell them in that interview, as a citizen, abandoning for the time being your position as counsel, "Take the list and let the legal rights of the parties be determined hereafter?"

A. I have no recollection of saying that.

Q. I only want to press you so far as this, to see if you are so far certain that you are prepared to say there was no such conversation.

A. I should say it did not take place.

Q. But the result of the whole was, that when you went out they did not give you any notice that they had adopted the list?

A. None whatever; they were to decide after I left; and if they decided in favor of it, they would communicate to the State House at 5 o'clock, or in season.

Q. At the time of that coversation you knew personally, I suppose, nothing of the condition of the deficiency of the city, that is, how large a number was required to make up the quota?

A. No, sir.

86 Q. As a citizen you knew from the proclamation that there was to be a draft for a deficiency soon, (in September,) and you acted from this general knowledge rather than from any particular knowledge in regard to the quotas of the wards?

A. I had had conversations with more or less persons from different wards of the city upon the subject.

Q. You had made no examination of official papers?

A. No, sir; I knew nothing of official papers; I knew nothing exactly as to the figures; I only knew the feeling there was in the city.

Q. At the last interview you had with Mayor Lincoln, no one was present but the mayor?

A. I had no recollection of any one else being present.

Q. Had you at that time any certificate?

A. No, sir.

Q. Had you attempted at that time to get any certificate of the allowance?

A. No, sir; I went to him to see if he wanted a certificate.

Q. But no attempt had been made to get one?

A. No, sir; the very object of going was to see if there was any need of it.

Q. And he gave you the number?

87 A. He took a piece of paper and gave me the figures, and said that was the number.

Re-direct.

By Mr. Butler:

Q. You have been pressed by the counsel on the other side as to whether at that interview with the mayor, he claimed that the list might be adopted without reference to the contract; I desire to ask you, in explanation of that, whether it was not understood by you and by those present that the adoption of the list was the adoption of the contract?

Mr. Curtis. I object.

The Court. You must ask what was said. He has answered pretty distinctly that he thinks no such conversation was had.

Mr. Butler. Exactly. But if he knew that if he could get this list adopted, it was the adoption of the Burrill contract, then he would be certain that no such conversation would take place.

The Court. He must state what was said. It is too plain.

Q. Whether the adoption of this list was spoken of as the adoption of Burrill's contract or Burrill's acts?

The Court. If anything was said upon that subject, you may state what was said.

88 A. No, sir; I have no recollection that any such words were used, that the adoption of the list would be the adoption of Burrill's acts or contract.

Q. Or vice versa?

A. No, sir; I was urging its adoption. They were suggesting reasons why they ought not to adopt it.

Q. I want to call your attention a little further to that. You have already stated that you were urging the adoption of the list as Mr. Burrill's counsel, and they objected that it did not fulfil the contract, or Alderman Norcross did.

Mr. Curtis. That is your interpretation.

Mr. Butler. No, sir; that is what was said. They objected that the contract required men and not credits. Now, sir, what I wish to ask you is, was there not something said about the adoption of that list being the adoption of the contract when that objection was made?

A. I have no recollection that there was.

89 *Testimony of Geo. W. Warren.*

By Mr. Butler;

Q. Mr. Warren, you were an alderman of the city of Boston, I believe, in 1864?

A. Yes, sir.

Q. Were you engaged in recruiting, as one of the aldermen?

A. I was, sir.

Q. Whether the whole board of aldermen were engaged in recruiting?

A. They were, each in their own wards.

Q. At any time did Mayor Lincoln consult you upon the question whether the city should claim the credits upon what we know as the large lists?

A. He did, sir.

Q. When was that?

A. Just before the draft of September, I think, sir, or some time late in August, I should say; I don't remember the positive date. I only know that ward 8 was fearing the draft very much.

Q. Had you known Mr. Burrill at that time?

A. No, sir.

Q. You knew nothing about him?

A. Nothing at all. I don't think I had heard his name mentioned at that time.

Q. Had you heard anything about what is called the "aldermen's list?"

90 A. Yes, sir; I started the list myself. In looking after the recruiting I found that men we had enlisted were not credited to the ward. I watched the matter very closely, and when the wife of one of the men came to get her money I was very sure that the name was not upon our list. We were then fearing the draft of the 15th of May, which came and found us fifteen short. I went to the provost marshal's office and found he was credited there, but not credited to ward 8, and found 52 other names in the same condition; and visiting the mayor at that time, in April, I spoke of the offer that had been made by a certain lieutenant to get us the credit if we would pay for them, and suggested his writing to Washington to obtain them; and I think this commenced this Washington movement to obtain credits in regard to this matter.

Q. Of men from the navy?

A. Yes, sir.

Q. Then you know about the small list. About how many names were you enabled to get upon it?

A. That small list was a list of those I had verified who had entered the navy, designating their wards; and they were confirmed by the action of the mayor's assistants as belonging to the city. That list comprises something above 3,000 names.

Q. Were there any objections to the allowance of the list?

91 A. The difficulty was that there was no authority under the law. The work went just so far, and stopped short of giving

credits to the wards. It stopped just short of our getting any advantage to save us the benefit of the men so belonging.

Q. You say, that being the state of things, the mayor consulted you about the large list. What did he say to you?

A. The interview I refer to was near the close of August. It was after the appointment of the commissioners, and while the matter was before the commissioners. I was in my place in the alderman's room, and the mayor came to me with a statement in regard to the large list.

Q. State all he said, as well as you can.

A. And the small list, too; the small list, which we felt sure we could obtain, and the large list, which there was a doubt about our obtaining; and the question was asked me by the mayor whether we should go in for the large list or the small one, and, under all the considerations of doubt pertaining and expense pertaining, I advised to go in for all we could get.

Q. He spoke of the expense of obtaining this large list. What expense was that?

A. I don't say that he did. I say it was upon my mind, in the consideration with myself. I will state that for every man
92 we obtained I expected to have to pay $125; and in addition to that it was giving the city the ward bounty.

Q. What was that ward bounty?

A. The best bargain we could make, from $10 to $50.

Q. Whether in the discussion between you and the mayor, as to the large list, the question arose as to how much they had got to pay?

A. There was no debate whatever in regard to it; no word mentioned that I remember in regard to it, any more than there would be about anything else we received and had to pay for.

Q. Do you mean to say that, both knowing the amount, you did not discuss it?

A. It was so on my own mind. I remember no words by the mayor as to the cost.

Q. Was there anything said about the expense being larger if the larger list was obtained?

A. Not a word.

Q. Nothing was said on that subject?

A. Nothing that I remember.

Q. Now, sir, to pass from this conversation, as an alderman and one of the recruiting officers of the city of Boston, did you know that you were to pay $125 for each one of these credits?

A. I so understood it; and I wanted all the men, because I represented a poor ward, as it was called—a poor ward in money,
92 and I should be more likely to advocate the large list than some wards better supplied than ward eight.

Q. You have stated that some lieutenant made an offer to supply these men. At what price?

A. When looking at this case of Hare, I went to the provost marshal's and found that fifty-four names besides that belonged to ward

8 were not credited. I endeavored to get him to assist me in getting credit. I visited him daily, and he promised assistance every day; and finally I was told that if I would pay a reasonable sum, the work could be done, and he explained to me the reason, that these clerks of Gov. Clifford had this large amount of work to do, and could not attend to it.

(Objected to.)

Mr. Butler. The only ground that I put it in upon is the value of the services, and what those of other people are.

The Court. The court is unable to see how the conversation applies.

Mr. Paine. Suppose, may it please your honor that we are obliged to resort to a "quantum meruit?"

The Court. Under no claim in your writ would it be admissible?

Mr. Butler. I am not pressing the conversation, but the fact.

The Court. I think that better be waived.

94 By Mr. Butler:

Q. What was the price, not what was said?

A. The price to be given?

Q. Yes, sir, for men.

A. The final offer was $25 00 apiece, and I believe the understanding was that we should pay , &c.

(Objected to.)

A hundred and twenty-five dollars was paid.

The Court. We are inclined to think that the last answer was not admissible; what this witness understood was to be paid we are not able to see is material in any view of your case. Very different rules will obtain as to the value of services which the plaintiff performed. We are inclined to think at present that this objection was well taken; and 'tis always the duty of the court to respond to an objection.

By Mr. Butler:

Q. Now I desire to ask you, didn't he tell you that an offer was made; that Lieutenant Macaulay offered to procure credits?

A. He did.

Q. When?

A. Immediately after receiving it, some time in the close of April, or the beginning of May—just before the draft came in May.

Q. What was that offer which you communicated to the mayor?

(Objected to.)

Mr. Butler. This may it please your honor, was before an
95 offer was made, and we say was one of the inducements.

The Court. We will hear your explanation, Gen. Butler, though our opinions are against the questions at present. A single remark from the court first. If you prevail upon your contract, the price is fixed, if my memory serves me right, by the contract.

Mr. Butler. Yes, sir.

The Court. If you leave the contract and proceed upon one of merit

and value, it occurs to the court that this is not material to that inquiry.

Mr. Butler. I had supposed, may it please your honor, in this view, that it is attempted to be stated here that there was an understanding that men would be procured, and not credits, under this contract. To meet that view of the case, I propose to show that one Macaulay, a lieutenant, proposed to get from the navy certain credits exactly like these for the city. He made an offer to Alderman Warren, one of the recruiting officers; and that offer was a certain sum. He communicated that to the mayor, and the mayor replied that he should prefer to not take that offer, but to give more, and had made a contract to give more to a man upon whom he could
96 rely, referring to Mr. Burrill. If I get that testimony, which I hope to get, if your honor allows me to put this in, I then have settled this question of the Rock Island prisoners, and not any credits, by showing that at the time of making the contract it was in the mind of the man who made the contract on behalf of the city that credits were to be got as well as enlistments. Then it goes to show what other people would do the same service for. If you rule that we cannot do this, then we go to our quantum meruit; what other people would do the same work for.

The Court. You wish to show what your services were, and what your expenses were?

Mr. Butler. What they were, and what like services were worth. As for instance we contract to carry on a suit for so much, and we fail to obtain the price of the contract, then we come for so much merit; and then we should go to our brothers of the bar, and say, "what do you charge?" And we say, that A and B bargained for so much. So here is one of these recruiting officers; and we desire to show what other men engaged in getting recruitments were getting, and to show how much we deserve to have.

The Court. We are of the same opinion, that the evidence
97 is not admissible. It must be general evidence, and not particular cases.

By Mr. Butler:

Q. You communicated this matter to the mayor. Did in any conversation the mayor say anything about this contract?

A. I communicated the name and handed the card of the lieutenant, and stated the facts.

The Court. The inquiry now is whether the mayor stated anything about this contract.

A. I stated before, sir, that he never used Mr. Burrill's name up to the time of my testimony.

By Mr. Butler:

Q. The names of anybody?

A. Not at that time. I am now referring to the commencement of this whole movement to obtain naval credits of the names that I found were due to us, and were not credited.

Q. The men already enlisted?
A. Already enlisted.
Q. And this was in the last of April or May?
A. The last of April, I think.
Q. Or the first of May?
A. I doubt if it was in May.

Testimony of Charles F. Dana.

By Mr. Butler:

Q. Mr. Dana, were you an alderman of the city of Boston in the year 1864?
98 A. Yes, sir.
Q. As such, sir, did you act as recruiting officer?
A. Yes, sir.
Q. There has been an order read here appointing a recruiting committee. Were you on that committee?
A. I think not, sir; I do not remember positively, but I think I was not.
Q. You were on the recruiting committee where all the aldermen were?
A. Yes, sir; undoubtedly I was on that one.
Q. Did that committee of all the aldermen appoint any sub-committee to do its business, a sort of executive committee?
A. I think they did, sir; I have got an impression that a certain number of the aldermen and members of the common council formed the recruiting committee, and had the matter in charge generally, and each alderman was recruiting officer in his own ward. I do not state this matter positively; it is only my belief so far as I remember.
Q. Now, sir, had the committee of the board of aldermen informal meetings in the mayor's office, and not before the board of aldermen?
A. Yes, sir; they had frequently meetings for consultation merely.
Q. Were these meetings notified?
99 A. By merely notifying gentlemen to step into the mayor's room for the purpose of discussing matters generally.
Q. Did you have these informal meetings upon the subject of recruiting?
A. Yes, sir; I think that recruit matters came up before these meetings the same as other subjects of importance. That practice was followed very generally that year.
Q. Will you tell me whether any of such meetings were notified when there were no meetings of the board, as a part of the council?
A. Yes, sir; such meetings have been notified.
Q. When did you first hear, if ever, of this contract of Mr. Burrill's that we have read here?
A. I cannot specify any time, sir.
Q. Did you hear of it at a meeting?
A. Yes, sir; a contract was read at an informal meating of the board of aldermen.

Q. Who read it, sir?
A. I think the mayor read it.
Q. Was that before or after it was signed?
A. I think that was previous to the signing by the mayor.
Q. How full a meeting was there of that board sir?
A. I believe all the aldermen were present.
Q. How many persons were present at that meeting?
100 A. A pretty much all the board. There was a single exception, perhaps two.
Q. This contract was read before them?
A. Yes, sir.
Q. Whether the contract was approved at the meeting of the aldermen?
A. Yes, sir.

Mr. Curtis. Of course all this will come in under objection. We do not conceive that this was an action of the board of aldermen at all.

Mr. Butler. Your honor will see that the statute will tell as regards that.

The Court. This seems to be fairly within the arrangement. In the course of the evidence it would come in subject to objection.

By Mr. Butler:

Q. You have said it was approved?
A. Yes, sir; I think the mayor asked the advice of the members, and no objection was made.
Q. Then it was a unanimous approval?
A. Yes, sir; I believe I did not hear of any objection. I am not positive about that, but I am very strongly of opinion that there was none.
Q. You will state whether anything was said at the time about naval credits?
A. No, sir; I don't remember anything particularly being said about that.
Q. Was there anything said when the contract was approved
101 as to where the credits should come from?
A. I think there was something said about these men being detained at Rock Island, Ill., being taken for rebel prisoners. It was supposed that that would be one of the sources of this supply.
Q. State whether the entire board was summoned to that meeting?
A. I do not know what the mayor did.
Q. Whether they were notified to come, sir?
A. I cannot tell, sir; they were all there, with possibly one or two exceptions.
Q. How were you notified to come in?
A. By the mayor's request, sir.
Q. You have stated that it was common that year on subjects of importance to have these informal meetings.
A. Yes, sir; these informal meetings took place before nearly every regular meeting of the board of aldermen.

Q. Whether these informal meetings were had upon subjects which it was thought necessary to discuss in private?

A. Yes, sir.

Q. That was the reason of these meetings?

A. Yes, sir.

102 Q. Were there contracts made by the city in the same kind of meetings—the Ross contract, for instance, for the purchase of Germans over in Germany?

A. I don't remember anything about that contract, sir, how that was made.

Q. Were there other contracts made in the same way?

A. I don't remember any contracts being made. I remember contracts being talked over and being discussed as to their expediency.

The Court. Should the court allow other contracts to be brought in, unless they are to be the subject of cross-examination.

Mr. Butler. We are quite willing, may it please your honor, that they should cross-examine upon them.

The Court. I think the court is not quite prepared to treat of more than one case at a time. The court has allowed you to show that these meetings were held; but now you come to the particulars as to the contracts, and it cannot possibly be necessary, and would tend to make collateral matters before the jury, and even before the court.

By Mr. Butler:

Q. Do you remember in this meeting, where this contract was approved, whether anybody applied and was refused admission?

A. No, sir.

103 Q. Anybody prevented from coming in?

A. No, sir.

Q. Anybody (to use a phrase borrowed from another direction) tied to the door to keep people out?

A. No, sir.

Q. Why wasn't it a public meeting, so far as you know?

A. It was not usual for other parties to be present.

Q. Was it usual for other parties to be present at the regular board when they had no business?

A. Yes, sir; undoubtedly the regular board was public.

Q. A public room in one case?

A Yes, sir.

Q. Any more measures taken to keep the public out in one case than in the other?

A. No, sir.

Q. At any of these meetings was there measures taken to keep people out?

A. Not to my knowledge.

Q. Do you remember the time of day of the meeting?

A. No, sir; I do not remember the time of day of that meeting.

Q. After that, did you learn, sir, whether that contract had been signed and executed?

A. I think I did, sir.

104 Q. At any of these meetings were sub-committees appointed for recruitment and other purposes?

A. Yes, sir.

Q. Sub-committees of the board were appointed?

A. Yes, sir.

Q. Was there a sub-committee appointed on this very claim at one of these informal meetings?

A. Yes, sir, I think there was.

Q. When was that, as near as you can give?

A. I have an impression, although I am not positive, that it was appointed at a meeting subsequent to this meeting, where the contract was read. It may have been at the same meeting, but it is my impression that it was a later one.

Q. Was it before or after the allowance of the credits by the commission?

A. I have forgotten how that is; I could not tell you.

Q. Who composed the sub-committee?

A. Alderman Norcross and Alderman Nash.

Q. Who was joined with them?

A. The mayor.

Q. Judge Sanger has told us that Alderman Norcross and Alderman Nash were present. There was but one Alderman Norcross,

105 and one Alderman Nash on your board?

A. That is all, sir.

Q. You have stated that you were one of the committee on recruiting; did you do any recruiting yourself?

A. Yes, sir; I recruited in my own ward.

Q. Now, sir, about the practice of getting the money; how did you get the money for recruitment from the treasury?

A. It was generally by drafts on the treasury.

Q. Drafts signed by whom? Take your own case now; you wanted money for recruitment and you were acting as a recruiting officer; who were your drafts signed by?

A. I think they were signed by Alderman Norcross, who was chairman of the recruiting committee.

Q. Upon requiring money it was taken for that purpose on drafts signed by the recruiting committee?

A. Yes, sir; I think that was the course taken.

Q. And was that on a demand made by the recruiting officers?

A. Yes, sir.

Q. Who drew as he pleased?

A. Yes, sir.

Q. Paying for men what they pleased?

106 Yes, sir.

Mr. Curtis. That is a leading question.

A. That is, I believe the pay in some cases was limited.

By Mr. Butler:

Q. What was that limit?

A. I don't remember just this moment.

Q. One hundred and twenty-five dollars?

A. I should not like to say positively.

Q. Is that the inclination of your mind, or don't you have any remembrance?

A. I don't remember about it.

Q. About how much did the recruiting officer draw at a time?

Mr. Curtis. How can this be material?

Mr. Butler. For this, if your honor please: it is stated now that nothing can be done without full boards of aldermen. I propose to show an entirely different practice. I agree that the charter shows that when the board of aldermen sits as a portion of the city government, an integral portion of the city government, that is, a part of the city council, that it has an open session. But the statute has made the mayor and aldermen, not the city council, not a portion of the city council, made them disbursers of certain funds for recruitment. The statute makes them so. It says the officers of
107 towns, and the mayor and aldermen or the city council of cities. The city council of a city may mean both the mayor and aldermen, but it allows the mayor and aldermen to be recruiting officers precisely as the statute makes the mayor and aldermen have charge of certain lunatics and persons to be put under guardianship. The law commits it to the mayor and aldermen, and not to the city council. We suppose that the mayor and aldermen may exercise that power by themselves, and not as an open board. We suppose that the mayor and aldermen must sit in open board, when they sit as part of the city council; but when they have a special duty assigned them under the statute, they may or may not sit in open board; and if they were accustomed to do business in that way, as we hear of their doing, appointing sub-committees on recruitment, and these sub-committees drawing these large sums, why then we should argue to the jury, with your honor's leave, that this being the mode of business, the city must be bound by it, and not say when A or B asks his pay, "We won't pay it because we didn't act in the way of business;" and, therefore, I want to show that large sums were paid to these recruits, not by the mayor alone, but by every one of
108 the board of aldermen that chose to ask them of the sub-committee appointed in this recruiting matter, and his draft went to the treasurer in favor of everybody else except my client; and I desire to say that this was a common practice. And I ask, if that obtained by everybody, why the city is not bound by it in this case, if this contract is one that they were allowed to make; and that will be another part of this case which we will endeavor to show to the court. Therefore, I ask to show how much some of the recruiting officers drew.

Mr. Curtis. The special question which was objected to was how large a sum these gentlemen received as a sub-committee on recruitment, so to speak, in one aspect of it, and as recruiting officer in another aspect of it, from the city. He stood in two capacities or relations; he was a member of a large committee on recruitment, raised by the city council, consisting of the board of aldermen and the common

council, and that committee including every alderman. It included a certain number of the members of the common council from each ward. In addition to that each alderman.

109 The Court. Did it embrace the mayor and aldermen and common council?

Mr. Curtis. The city council embraces by statute the board of aldermen and the common council. The mayor is not a member of the board; he is the presiding officer when he happens to be present.

The Court. The city council is the aldermen and the council?

Mr. Curtis. Yes, sir; now the large boards raise a board of recruitment. The record was read yesterday, including the mayor and board of aldermen and certain members of the common council who were joined to that committee. This gentleman was a member of that committee. That was his relation to the city of Boston in this affair, and beside he was a recruiting officer appointed by the governor. Now in order, acting in this capacity ——

The Court. It does not occur to the court that the witness has so stated.

Mr. Curtis. He has not yet so stated; but he will so state; inasmuch as the city of Boston had no recruiting officers it must be that he got his commission from some other source. It will appear that he got it from the governor. He was acting, it will appear,

110 as a member of the committee, and beside that as a recruiting officer, and a recruiting officer of the city authorized to pay $125 towards actual recruits. Of course this gentleman when he recruited a man called upon the proper authority and obtained the money to pay for that man. That proper authority, he says, was Mr. Alderman Norcross, who was chairman of the committee of the city council. Now Gen. Butler desires to ask—and that is the specific question objected to—what particular sums he had. I submit that it is wholly immaterial, whether it was a thousand dollars or a hundred thousand dollars; it is wholly immaterial to us whatever he had from the chairman of the common council or how much he drew. It is immaterial to go into the inquiry.

Mr. Butler. And we answer, may it please your honor, that we do not accept the fact, that he had it regularly by drafts from any regular authority under the charter; and that is the very question.

Mr. Curtis. And that question I have not objected to.

Mr. Butler. The learned gentleman says that when he recruited a man, he got the authorized sum of $125 provided by statute. I pro-

111 pose to show, if I am allowed, that he drew large sums of money before getting the men, and distributed it in his own way. It is said that a recruiting officer appointed by the governor might make any draft on the city treasurer of Boston. I am not aware of any statute allowing him to do it. I think it is another of these irregularities. His being a recruiting officer for the government had nothing to do with his drawing this money. It is said that a member of this recruiting committee could only draw as much money as he had paid out to the recruit; but my proposition is to show, that these gentlemen and others, (and I have no doubt they administered it very

properly,) drew large sums of money before they obtained their recruits, and deposited it in their banks subject to their own checks, and drew it out as they pleased. And I want to show that kind of action in order to get rid of this course that the city of Boston is trying to set up that everything must be done by some rule. Suppose they did not do it according to some rule of theirs, does that alter our right. The statute is directory. But suppose they do not do what they are directed. Why it is merely directory,
112 and having done it or having failed to do it, the city is as much bound to abide by these acts as though they acted by their own direction. I take it that that board have executive sessions in which they undertake to pass upon officers. The statute is directory, that that executive session shall be in public. Is is merely directory; it is not binding upon other people dealing with the city upon the strength of their act. I am trying as well as I can to show the current of custom and of business. The meetings were more often in secret than in open session of this very committee; if it please your honor, which my brother claims has regularly drawn money from the treasury. What I desire of the court is to allow me to go into the various acts and show what was done and then argue to the jury to infer that this business being done in the same way was according to the usual custom and practice of business by the city.

The Court. Some embarrassment is felt by the court in ruling upon objection to evidence in consequence of an arrangement between counsel to allow many matters to go in subject to objections hereafter to be made. Aside from that we would have felt no embarrassment in
113 the matter immediately under consideration. But we have finally come to the conclusion that where specific objections, unless upon suggestion of the court that they should be withdrawn, the only course that the court can pursue with any assurance of being right is to make the ruling conform to their view of the action of law in the case. The particular question put here is whether the witness upon the stand did not receive large sums of money in some way from the treasury of the city before he had procured recruits for which it was intended to be disbursed. We are unable to see how that the answer, whatever it may be, can benefit the plaintiff or damage the defendants, and we are inclined to exclude the question purely upon the ground of immateriality. The plaintiff proceeds in the first instance upon a written contract which is fully proved and admitted in evidence. Really, the court at present can hardly know what answer the defendants will make to that contract. Judging from suggestions, more particularly of the plaintiff, it perhaps may be inferred that the defendants intend to deny the authority of the mayor of the city to make a contract, or perhaps of the city itself to do the act or acts contemplated by the contract in the manner therein agreed to be done. I suppose that to be the question; and we must determine the
114 question of law as to the power of the officer to execute the contract, or of the defendant city to authorize him to do it. If the power exists, the court will so determine. Then it is wholly immaterial whether the defendant city or its chief executive officer

have or have not done their acts without authority of law, or in an illegal manner. On the other hand, if the power does not exist proof of the fact they performed many other acts illegally and without authority of law can have no tendency to establish a power in an officer which does not exist. The question perhaps implies that money was furnished irregularly, and it may be without authority of law. But suppose the answer to be, or that the answer if allowed would be to that effect, which is the most favorable view that can be taken of it for the plaintiff; how can it benefit the plaintiff? Let the mayor of the city perform official acts irregularly or without authority of law in other matters, if he had the power to make a contract that is enough for the plaintiff, if the contract itself is sufficient in its form. If he had no power, and that question is made, the court must rule upon that. So that in any view we are able to take of the
115 case now, the question which calls for testimony is entirely immaterial. If the question could be submitted to the jury, whether the mayor had not performed other acts without authority of law, quite as much so as in this case, then it might be quite necessary for the plaintiff to introduce these other irregularities. But the law knows of no such rule. The contract in this case, so far as the question of power is concerned, must stand precisely as it would stand if it appeared that every other act of executing it was a legal one, or just exactly as it would stand if it appeared that every official act of the party executing it was illegal. Neither one supposed case nor the other can affect the legal view of the case. And our view, therefore, with the light we have of the controversy, which is certainly quite limited and restricted at this stage, (for the counsel may as well understand that only one member of the court had any knowledge of the particulars whatever when it commenced, and the other very slight,) in the view we take of it, the question calls for immaterial testimony. And the embarrassment that we have felt on account of the agreement of counsel has arisen not from any doubt as to
116 the immateriality of the evidence, but whether in view of the arrangement of the bar, we might not let this come in as fairly within that arrangement. Should the court adopt that line of proceeding on this occasion, you will readily perceive that it loses all power. We cannot consistently conform to that supposed rule of action. We are quite willing that counsel should allow matters to go in subject to future objections, and offered in that view, if they did not extend so far as to produce obvious embarrassment to the court in the performance of its duties; but when specific objections are made on one side or the other, there is no proper course left except to rule upon their positive admissibility. With that understanding and view of the court, our fixed opinion is, that the evidence is immaterial. It cannot be material to the jury.

By Mr. Butler:

Q. Whether as acting on the committee as you did, you were paying for credits without getting the men?

A. No, sir; I think not. Oh, I acted on the committee (I forgot

what the action of the committee was) as recruiting officer; I only paid for the men.

Q. But acting on the committee—to illustrate, let me state
117 a case. Suppose an officer of the U. S. engineers should have sent a certificate that a given man in your ward was serving in his battalion; he would not appear in the roll of Massachusetts, but as one of the engineers; suppose a man brought you that certificate and says, "I can give you such a credit," didn't the committee pay for it?

A. I don't remember any such case.

Q. A case like that! What I desire to know is whether that committee did pay for credits.

A. So far as I remember that committee did very few services indeed. The minutiæ were detailed to a sub-committee, of which I was not a member. The whole committee met very rarely indeed.

Q. Didn't they dissolve, and the whole business was taken up by the aldermen after they were appointed recruiting officers?

A. No, sir; I think a committee had charge of some of the details composed of some of the aldermen and some of the members of the common council. I think the whole committee met very rarely indeed, and for the purpose of discussion. That is the impression that I have.

118 Q. Didn't your committee send out an agent to Washington to procure men from the veteran reserve corps?

A. Such an agent was sent, but I don't remember how he was sent.

Q. He was sent in some way?

A. Yes, sir.

Q. Was not some one sent to the rebel States to procure blacks?

A. No, sir; I do not recollect any such. I suppose the agent you refer to was Mr. Damrell.

Q. Yes, sir. Wasn't there an agent sent to Germany, to procure Germans to enlist?

A. No, sir; not to my knowledge.

Q. Mr. Ross, don't you remember a large number of Germans being brought over and kept at Deer island?

A. Yes, sir; I do.

Q. That done by the city?

A. I think not, sir.

Q. By the city authorities?

A. No, sir; not to my knowledge.

Q. Were they not apportioned among the wards by the city authorities? Didn't your ward have some of them?

A. Yes, sir.

Q. Then how did they come to be apportioned among the
119 wards if they were obtained by the city authorities?

A. I do not know who apportioned them.

Q. Were they not paid for by the city?

A. They were paid for by the citizens together or as substitutes.

Q. Didn't the city allow them to have substitutes for such a price? Didn't they pay a hundred and twenty-five dollars?

A. Yes, sir.
Q. And then the city paid the balance?
A. Yes, sir.
Q. The city paid $125, and then the citizens advanced the rest?
A. Yes, sir.
Q. What was the price then offered for substitutes to go into the army?
A. I don't remember precisely; about five hundred dollars; I should think from $300 to $500. It varied very much.
Q. Sometimes as high as $700 or $800?
A. I don't remember a case of substitutes put in at that rate. It is possible they were.

Cross-examination.

By Mr. Abbott:

Q. You told us you acted as recruiting officer?
A. Yes, sir.
Q. You acted as recruiting officer under an appointment
120 from somebody?
A. From the governor.
Q. Independent of your position as alderman?
A. Yes, sir; I had a commission from the governor.
Q. You acted as recruiting officer in your ward?
A. Yes, sir.
Q. Appointed for your military district?
A. Yes, sir.
Q. And you remember of being on one committee of recruitment?
A. That is all, sir.
Q. And that committee was composed of the aldermen and members of the common council?
A. Yes, sir.
Q. And that is the only committee you recollect of being on in any way. The mayor was not a member of that committee?
A. No, sir.
Q. Then as I understand you to say—and I only want to make these matters certain—that general committee from the two branches of the government chose an executive committee?
A. Yes, sir.
121 Q. Of which the present mayor, Mr. Norcross, was elected chairman?
A. I have forgotten whether it was elected by the two branches or appointed by the presiding officers. There was such a committee.
Q. There was a special committee made out of this general committee, and made of the general committee itself?
A. Yes, sir.
Q. That is, they selected a sub-committee out of their own number?
A. Yes, sir.
Q. Some members from both branches, were there not?
A. Yes, sir.

Q. You were asked in reference to the manner of getting money.

The Court. It occurs to me that if you enter upon that subject you must allow the other side to take the whole.

Mr. Abbott. I should explain the reason for asking this question. The question was put on the other side and not objected to as to the manner in which he obtained drafts, but objection was made as to the amount obtained, whether it was before or afterwards. However, upon the suggestion of your honor, I will not go into it
122 at all.

Re-direct.

By Mr. Butler:

Q. Didn't the mayor act as chairman of that committee, as he did of the other committee?

A. No, sir; Mr. Norcross was chairman of that committee.

Q. Did the mayor preside?

A. No, sir; I do not think he did.

Q. Didn't they invite the mayor in to act with them?

A. I have forgotten how that was. The actions of this large committee were quite indefinite. I don't think they met more than two or three times.

Q. When were they first appointed?

A. I don't remember that.

Q. As early as October, 1863?

A. I could not say, sir.

Q. Wasn't it some time in 1863?

A. I could not say.

Testimony of James G. Macaulay.

By Mr. Butler:

Q. Mr. Macaulay, what situation did you hold in May and June, 1864?

A. Clerk of the naval rendezvous in this city.

Q. From your position, did you become acquainted with the
123 fact that there were certain enlistments in the navy that might be credited to Boston?

A. Yes, sir; I did become acquainted with it.

Q. Did you communicate that fact to Alderman Warren?

A. Yes, sir.

Q. Afterwards, sir, did you go to the mayor with it?

Mr. Curtis. Hasn't this been ruled upon?

Mr. Butler. No, sir.

Mr. Curtis. I understand it to be so, when they asked this question of Alderman Warren.

Mr. Butler. He could not have been asked, from his position in the matter. I am now coming to the fact: this witness made the mayor an offer as to the credits, and he thereupon said that he had agreed with Mr. Burrill for them.

Mr. Curtis. That would be a different thing, and we should object to that on another ground.

The Court. Gen. Butler, you know it is very well settled that all the negotiations about a contract are merged in the contract itself.

Mr. Butler. Undoubtedly, may it please your honor; I do not mean to deny that at all. They have called out in the cross-
124 examination, or otherwise, certain evidence tending to show that these were for Rock Island prisoners.

Mr. Curtis. We have not called out any such evidence.

Mr. Butler. Well, then, I have called it out; at any rate, it is before the court and jury.

The Court. It does not arise solely upon the contract itself.

Mr. Butler. It might or it might not, I propose to show, and it is the same class of evidence that I have put in here over and over again when I asked Judge Shanger what the mayor said. When I asked Gov. Clifford what the mayor said, no objection was made.

The Court. And the court allowed it to go in, of course.

Mr. Butler. Now, if it please your honor, I have a word to say just here. I do not understand how I agree with my brothers to let in certain evidence, and after it has arrived at a certain point, they choose to haul me up at once.

The Court. It is certainly attended with embarrassment.

Mr. Butler. It is a thing that I am to go thus far in, and
125 then be checked all at once.

The Court. What do you say to that, Judge Curtis? For I am free to say it does make some impression upon one member of the court.

Mr. Curtis. I say that if the court think it is within the agreement, we will withdraw, although we think it will be ultimately sustained.

The Court. The district judge remarks that he does not know what that agreement was.

Mr. Butler. The agreement which was stated in court was that either side might put in evidence subject to objection when we got through, and that in case there was anything that either party could not supply in form, the other party should do so.

Mr. Curtis. That was the agreement, and if this is in the spirit of that agreement, we will withdraw our objection. I did not suppose myself that it did go so far as to consent to the introduction of evi-
dence as to talk about a written agreement. I did not suppose
126 such evidence could be within the scope of the agreement. But, if the other side think it is, I am willing to withdraw my objection.

Mr. Butler. There is another view that I am safe in putting to the court, if there is any doubt on the admissibility of the evidence.

The Court. The court desire to make a remark upon this general subject. We are both of an opinion that the best mode of trying cases is the usual and legal one, which gives each party the right to offer testimony, and to the other the right of objection. In such cases, where the trial proceeds in that way, the court does not usually interpose objections. It may do so, and sometimes does, but usually does not. This arrangement having been made at the bar, the court allowed the trial to proceed under that arrangement, perhaps

unwisely; nevertheless the court did, and it is rather too late now to correct our own errors. And we certainly would not attempt to correct the errors of the bar without first correcting our own. Under the circumstances, we suggest that you forward in the arrange-
127 ment you have made, exercising some degree of care upon one side and the other, not to extend the privilege beyond the real intentions which both sides had when it was entered into. It will, doubtless, create embarrassment to the court; and the court not having interposed objection at the moment, it may perhaps embarrass the parties to interpose at this stage of the case. With these remarks, we are, on the whole, inclined to allow this particular question to be put, although I think it right to say that we are not able to see any point of view in which it may benefit either party or the counsel.

Mr. Butler. I think I do, may it please your honor. And will your honor permit me to state in regard to the agreement, your honor will probably have saved hours, if not days, in the discussion of it.

The Court. We will go through as we commenced. I entertain a good many doubts.

By Mr. Butler:

Q. You saw the mayor on the subject?

A. I did.

Q. What did you say to him in substance?

128 A. I do not remember what I did say. My object in calling was to secure the work of crediting these men—these names.

The Court. That is too far.

Q. You said something to him. State what it was, not the words, but the substance.

The Court. State the words, if you can; if you cannot state the words, state the substance; if you cannot state the substance, you can state nothing.

A. The substance was that certain names on the books, at the office naval rendezvous; if these were names of men having a residence in Boston, I thought I could credit them.

Q. What did he say to that?

A. He was much pleased to think that these names could be credited.

Q. What then?

A. Then I stated in conversation that if I was paid for the work, I would do it. Do you want I should state the whole conversation?

Q. Yes, sir; that is what I am asking you for.

A. The agreement was that I was to receive $25 00 a name, provided I credited them, and they were allowed to the city. I did not, at that moment, secure a contract, only the verbal one was made, when I first called; but, calling again at the end of the week, I
129 found that I had not the time to go on with it, and to secure the clerical force which was necessary, and I gave it up; and I went the second time to the mayor.

Q. What did he say, if anything, as to whether he had an arrangement to get these credits?

A. I do not recollect as to the second time, but in the first conversation he made some allusion to a Mr. Child, who had been emyloyed by the city.

Q. What allusion did he make to anybody else, if anybody?

A. He mentioned Mr. Burrill's name.

Q. What did he say of Mr. Burrill?

A. He said the city was talking of securing Mr. Burrill.

Q. To do what?

A. To secure these names, and certain credits. It was a short conversation. I did not know Mr. Burrill.

Q. The same credits that you were talking about?

A. So I presume.

Q. And so you understood?

A. Yes, sir.

Q. Did you talk with the mayor after the contract was made?

A. No, sir.

130 Q. This was before it was made. He said he thought of getting Mr. Burrill?

A. Yes sir.

Q. At the second time when you called on the mayor, did he say anything whether he had or had not made a contract with Mr. Burrill?

A. That I do not recollect.

(No cross-examination.)

Testimony of Charles Burrill.

By Mr. Butler:

Q. Mr. Burrill, had you had some experience in obtaining credits of men for towns, in the year 1864?

A. Yes, sir.

Q. We hear that you made a contract with the mayor of the city of Boston. How came you to meet him, sir?

A. I called upon him the latter part of May, 1864, with reference to procuring the naval credits

Q. Will you state that interview?

Mr. Curtis. This, of course, is subject to our objection.

Mr. Butler. Certainly.

A. At my first interview, at the latter part of May, I stated to him that I had been informed that the city of Boston had a large number of men in the navy which they had failed to get credited upon this quota, and that I was willing to undertake that

131 work, if I got paid for it. I also stated to him that I understood that there were men on board the Ohio from Rock Island, Ill., that claimed to be citizens of Boston. I thought I could get them credited from the city of Boston. The mayor wanted to know what I would charge for doing that duty. I told him $200 00 per man

credited. He said he would confer with the board of aldermen and the committee, who had powers in the matter, and asked me to come in again in two or three days, and he would give me their answer. I did so. On my calling again, he informed me that he had consulted with the committee, and they had authorized him to give me $125 00 for that duty. At that price, he says, the contract will be binding upon the city of Boston, and anything more than that will not be binding. I accepted the offer, and made that contract. (Exbibited.)

Q. Did you write that? (Handing contract to the witness.)

A. I did, sir.

Q. Who put on the date, sir?

A. Mayor Lincoln.

Q. Who put in the word "full"?

A. I interlined it in his presence.

132 Q. When was that written?

A. It was written at the time of the second interview, at the time I accepted the offer, and left it with him, as he desired to submit it to the committee for their answer; and I was to call again.

Q. And then you called a third time?

A. I called a third time, which was on the 31st of May.

Q. What was said then?

A. He said the committee had authorized him to sign that contract, and he put his name upon it, signed it, and said he would afford me every official assistance in his power in furtherance of the work I had to undertake.

Q. Did he say anything about the price—whether he could get them cheaper than that?

A. He said that Mr. Macaulay had offered to do the work at a much less price, but he had not much confidence in his being able to accomplish it, and he thought it for the interest of the city to give me $125 00, because he thought I would put it through. That is what he told me.

Q. Then the contract was signed?

A. Yes, sir.

133 Q. State whether you took it on the faithful representation that he was authorized.

A. I took it upon the faith of his representation that he was acting for the city.

Q. Did he state whether $125 00 would be a legal contract, while another one would not?

A. I do not understand your question, sir.

Q. You say that he said that for $125 00 it would be a legal contract. Did he state the reason why it would be a legal contract in his judgment?

A. Because the State statutes authorized the city to give $125 00, and the city council authorized the city to pay $125 00 and no more; and therefore a contract would not be binding on the city for anything more than that.

Q. Well, sir, after you got the contract, what did you do then?

A. I procured clerical service, or assistance, and put them on

every ward in the city, for the purpose of ascertaining the names of men residing in the city that had enlisted in the United States navy. I also put clerical service on board the Ohio, and at the Navy Department at Washington, for the purpose of ascertaining the names
of the men enlisted in the naval service belonging to the city
134 of Boston.

Q. Well, sir, what was the result of that work?

A. The result was, that on the 18th of June, I think it was, I had got verified and located these two lists.

By the Court:

Q. Give the number of the lists.

A. Numbers 1 and 2. The list was 6,101 in the naval service; 428 in list No. 2, in the marine corps; making a total of 6,529 men, 1,403 of whom were one year enlistments; 1,262 two year enlistments; 3,434 three year enlistments; 428 four year enlistments. Reduced to three year enlistments, it makes 5,224⅔ men. That is what this list produced of three years' credits.

Q. Well, sir, having got this on the 18th of June, what did you do then? Did you show them to the mayor?

A. These lists were presented to the mayor.

Q. Well, what was done then?

A. And he annexed his official certificate to them, as by the documents will be seen, and wrote this letter, being dated 20th of June.

Q. To the Provost Marshal General?

A. To the Provost Marshal General; and he authorized me
135 to go in behalf of the city and procure the credits of these men under these lists.

Q. Will you read it?

Q. Well, sir; armed with that letter and those lists, where did you go, or what certificate did the mayor make at the same time, sir?

A. He made this certificate, date June 20th on the same day.

Q. Well, sir; what is that?

A. [Reads.] "I, Frederick W. Lincoln, jr., mayor of the city of Boston, hereby certify that the above-named men are, to the best of my knowledge and belief, citizens of said city and liable to military duty therein." He attached that certificate and swore to it before a justice of the peace.

Q. Now then, armed with the letter and these lists, where did you go?

A. I proceeded to Washington and presented the two lists and the letter to the Provost Marshal General, General Frye, and asked
136 that the names contained in the lists might be credited to the quota of the city of Boston.

Q. What was then done?

A. Gen. Frye referred the matter to the Secretary of War for want of authority; and it was referred to him.

Q. What did you do?

A. I presented the matter to the Secretary of War and then he referred it to Solicitor Whiting.

Q. What did you do then?

A. Solicitor Whiting referred it to the President.

Q. What did you do then?

A. Then I went to the President and laid the matter before him; and he finally gave me an order to the Provost Marshal General authorizing the credits of men under these two lists.

Q. What did you do then?

A. At the solicitation of the President, before I presented that order, he desired that as Mr. Whiting had suggested that the law didn't quite come up to the mark, authorizing him to make the credits, that I had better come in with Senator Wilson or some other member of the Massachusetts delegation and talk the matter over, and the next morning I did go to the President's office with Senator Wilson and talked this matter over.

137 By the Court:

Q. Went to what office?

A. To the President's, I suppose—I should say his house.

Q. What was then done?

A. What was done there?

Q. Yes, sir.

A. Shall I say what the conversation was with the President and Senator Wilson?

Q. Yes, sir; shortly.

A. The President said he had given an order for the credit of these men to the quota of the city of Boston. He thought it was right and just that he should do so; that they were part of the military strength of the city as much as if they had gone in the army; but that Mr. Whiting had made some doubt in his mind whether he was authorized to credit the men; he thought it best to get a section of law through Congress that would place the matter beyond all doubt. But in case Congress failed to pass such a law, he should let that order go through its usual course for the credit of the men; because he thought it was right and proper that they should be credited.

Q. What was done then?

138 A. Then application was made to introduce that section of a law authorizing these credits to the proper committee in Congress.

Q. Who made that application or caused it to be made?

A. Senator Wilson, at the suggestion of the President.

Q. What was then done? What did you do about it?

A. I repaid various parties to assist in getting the law passed.

Q. Paid men to advocate the law, I suppose?

A. Yes, sir.

Q. Well, sir; was the law finally passed?

A. Yes, sir.

Q. That we have seen?

A. That we have seen.

Q. Did you remain in Washington while it was going on?

A. Yes, sir.

Q. Did you fail the first time trying, sir?

A. We lost the matter twice in committee, and finally succeeded on the third time in getting the bill before Congress.

Q. Then when it was passed you came to Boston, I suppose?

A. After the passage of the law I called upon the President, and he said I had better present his order for the credit of the men
139 under these lists. I did so. Gen. Frye refused to credit the men because he did not wish to determine the question of residence. I then returned to Boston.

Mr. Butler. Your honor will observe that the government required that the question of residence should be settled by the Secretary of War.

Q. Well, sir; what then?

A. I then returned to Washington and presented these lists to the Provost Marshal General, showing that they had been enrolled, and he then informed me that the War Department had appointed Gov. Andrew and Gov. Clifford as commissioners to determine the residence of these men under this and under all.

Q. Right there while you were doing these things, did you have conversation with Mayor Lincoln?

A. On my return, in the fore part of July, I had conversation with Mayor Lincoln in reference to the entire business.

Q. In reference to what?

A. In reference to business under this contract; and stated to him how the matter stood.

Q. What did he say about it?

A. He expressed himself perfectly satisfied, and was glad I was getting success in getting credits.

140 Q. Then on learning on your return to Washington the third time, that the commissioners had been appointed, what did you do then?

A. Well, having ascertained that Gov. Andrew went in for the credit of these to the State at large, I called on the President to get fair play in behalf of the city of Boston.

Q. Well, sir; how did you succeed in that?

A. Well, it resulted in the President's issuing an order to the Secretary of War, Mr. Stanton, that if there was any attempt by the commission to credit these men to the State at large, to disallow the report, upon the ground that these men principally belonged to the sea-port towns of Massachusetts, and not to the inland towns, that had comparatively few men in the navy.

(Objected to.)

Q. What became of the order?

A. I presented the order to the Provost Marshal General, together with the two lists; that is at the War Department.

Q. Well, sir; what became of the order then?

A. Secretary Stanton advised that the two lists should be placed

before the commissioners, Gov. Andrew and Gov. Clifford, for the purpose of preventing Gov. Andrew from to the War Department, and at his suggestion, I returned and placed these two lists
141 before the commissioners, Gov. Andrew and Gov. Clifford, to determine the residences.

Q. Well, what was done finally with the lists? Let us exhaust this.

A. As I say, I placed the two lists before the commissioners, and so informed Mayor Lincoln, and how matters stood up to that time.

Q. What did Mayor Lincoln say to that? Did he approve or object?

A. He did not object.

Q. In the mean time had the aldermen got up another list of credits—the city, or somebody?

A. Yes, sir. The list of the aldermen was before the commission, and that was a subject of conversation between Mayor Lincoln and myself.

Q. State that conversation.

A. The lists of the aldermen were imperfect and not all identified, or comparatively very few of the men; and what could be identified under the aldermen's lists were all identified in these lists; some three hundred, as far as I went. The city were placing themselves in the position of applying for credits twice over, by allowing the alderman's list to remain there before the commission, and I suggested to the mayor the expediency of withdrawing the alder-
142 man's lists because they were imperfect lists, claiming credits of men that were not in the navy, and it was interfering with the business under this contract.

Q. Well, what did he say to that?

A. He said he would consult with the committee and take the matter under advisement.

Q. Well, what was done then?

A. I saw Mayor Lincoln some time in August in relation to the matter, and he still said he had it under advisement. I don't remember now what he did.

Q. What finally took place?

A. What finally took place with these two lists?

Q. Yes, sir. What did the mayor tell, if he ever did tell; what did he agree to do about them?

A. I saw the mayor at the State House on the 3d or 4th of September, and he informed me that he would like to see Judge Sanger in connection with these two lists; that he had a letter for him. That is the last time that I saw the mayor until the 5th of September. The rest of the business was done by Judge Sanger.

Q. Did he say who the letter was from?

A. From Gov. Clifford.

Q. Then, on the fifth of September, we find that the list
143 was allowed. Well, sir, up to the time that the list was allowed did the mayor, or the aldermen, or either of them, suggest to you that you were not properly performing your contract, and that this procuring of these lists was not according to your contract?

A. No, sir. On the contrary, Alderman Norcross and Alderman Nash, whom I had conversations with, expressed the desire that I should succeed in getting the credits allowed.

Q. Did the mayor tell you that you were not going on according to your contract?

A. No, sir. He never informed me but that I was performing my duty under the contract—never.

Q. When, if ever, were you informed that your contract was not a proper and a legal one, in every respect.

A. At the time he went to Dedham to get justice and failed to get it.

Q. At the time he went into court? Now, sir, about how much, in what you paid and agreed to pay, did these men cost you a head, independent of your own services and exertions?

A. I have not figured that up, sir. I suppose $20 or $30 a head for clerical service and various other things in connection with it.

Q. That, on six thousand men, would be a pretty large
144 sum. Are you quite sure that this is correct?

A. I am quite certain that it has been a very expensive job to me.

Q. Are you still under obligation to pay out for services that you have been unable to pay?

A. I am, sir.

Q. Well, sir, how much of your time did you spend?

A. Well, it took my time from the date of the contract up to the 5th of September, the time the credits were allowed; that is, most of the time, if not all.

Q. Whether other towns and cities were calling upon you to aid them in the same way, sir?

A. Yes, sir.

Q. And you had obtained credits for other towns and cities?

A. Yes, sir.

Q. Whether you got the same price as in Boston, or ought to have got in Boston? (We haven't got anything yet.)

The Court. Do you object to the question, Judge Curtis?

Mr. Curtis. I do not know whether to object to the question or not under the circumstances of the agreement.

145 The Court. I think I may safely say that this embarassment never will be likely to occur again in any trial where I am presiding. It is very evident that what the witness received from other parties will be no guide upon the quantum meruit in your case.

Mr. Butler. Very well; if your honor thinks so I will not press it.

Cross-examination.

By Mr. Abbott:

Q. Your first interview with Mayor Lincoln was just previous to the signing of this contract—a week or ten days?

A. Four or five days.

Q. You say that you personally told him at that time that you had procured men for the quota of Brookline from the prisoners at Rock Island?

A. No, sir. I never told him anything of that kind.

Q. In substance, I mean?

A. Not directly, nor indirectly; not substantially, sir.

Q. Did you say anything about procuring credits for Brookline from men who had enlisted in the navy at Rock Island?

A. No, sir.

Q. Did you say anything about Brookline?

A. I did.

Q. Did you say anything about having procured those
146 credits from men previously in the rebel service?

A. I never said anything to that effect.

Q. Was anything said in connection with your obtaining men for Brookline?

A. There was something said in connection with my obtaining men for Brookline.

Q. And did you not say there were men at Rock Island?

A. No, sir, I did not.

Q. Wait till you get the whole question. Didn't you say to him that there were men at Rock Island who would enlist in the navy at Boston, or who had enlisted, and for whom Boston might obtain credits?

A. I did not say that. I will tell you what I did say. I said to Mayor Lincoln there were men on board the "Ohio" who claimed the city of Boston to be their residence, who had enlisted in the navy subsequently to the 24th of February.

Q. After this time mentioned in the last act we have read, and might be enrolled after that time?

A. I don't know about that, sir.

Q. Did you name to him how many men?

A. No, sir. I didn't know how many men there were there.

147 Q. And these men you told him Boston might obtain credits for?

A. Yes, sir.

Q. And that was all that was said upon the subject of obtaining credits for prisoners at Rock Island at that interview?

A. Yes, sir.

Q. Was anything said at any of the other interviews before the signing of the contract, or when it was signed, upon that subject?

A. There was nothing said about the prisoners from Rock Island. There never was anything said, rebels, negroes, or anything of that kind. All that story is an out and out falsehood.

Q. And you have never said anything to the contrary before? Never have said that you told him men might be obtained from Rock Island?

A. I never said that men might be obtained from Rock Island.

Q. Well, men formerly in the rebel service, who were now willing to enlist into the service of the U. S.?

A. No, sir. I could not have so said; it is not true.

Q. You never said it either in court, or anywhere else?

A. No, sir.

148 Q. And the subject was not discussed at all after the first interview you had with the mayor? I mean the subject of the people from Rock Island, not rebels, who were in the naval service.

A. The conversation was about those people who had enlisted from Rock Island and who were on board the "Ohio."

Q. When was the conversation on that subject, after the first?

A. I don't remember that we had any conversation about it.

Q. Was there any conversation on that subject after the first?

A. Not that I remember.

Q. Did you take any means to ascertain how many had enlisted from Rock Island whose names were on the receiving-ship?

A. I did take means to ascertain the facts, and found Mayor Lincoln and Alderman Messenger had sent people on board the "Ohio."

Q. I didn't ask you what other people did. I ask you if you took any means.

A. I took means to ascertain whether the men were on board the "Ohio."

Q. What means?

A. By going on board and inquiring.

Q. Of whom? The officers?

A. Yes, sir.

Q. Do any of those names appear on these two lists?

149 A. No, sir.

Q. You never gave any such names upon either list?

A. No, sir.

Q. When was this effort made to ascertain whether any persons were there or not?

A. I think about a week after the contract was made.

Q. And that was simply by going on board the "Ohio" and then you ceased all efforts in that matter?

A. I went on board the "Ohio" and found that the city had taken means to procure credits on this class of men we had been talking about; and they were credited to ward 4, through Alderman Messenger.

Q. You found such information; that you did not put any such persons on your list?

A. No, sir.

Mr. Butler. He found that the city had taken advantage of his knowledge and had scooped up these men.

Q. How soon did you go to work to get these credits after signing this contract?

A. The next day.

Q. How did you go to work?

A. I put men on the wards.

Q. Who did you put on them?

150 A. There were various parties; I don't remember the names.

Q. Give me all you remember.

A. That matter was principally under the charge of a man named Roberts.

Q. Give the name of any other person you put on the wards to get information in reference to this contract.

A. Mr. Roberts.

Q. What Roberts?

A. William J., I think.

Q. Where is he now?

A. I don't know where.

Q. When did you last see him?

A. Some year ago.

Q. What other person?

A. He had the charge of that matter, and employed others under him.

Q. Do you know of any other person employed for that purpose?

A. I know I paid ——

Q. (Interrupting.) Do you know the name of any other person employed for that purpose?

A. I don't remember the names of those he had under his charge in that duty.

Q. Did you know and see others at the time?

A. I saw some of them.

151 Q. Who did you see? Give us the name of any one you saw.

A. I don't remember their names now.

Q. Can you remember the name of one now? You saw several, you say.

A. He had several clerical men under his charge.

Q. Do you know of your own knowledge what this force you say you put upon the wards did?

A. I suppose they did as I directed.

Q. Do you know of your own knowledge (not what others told you) what they did?

A. I don't know what his subordinates did.

Q. You were not present when they were doing anything?

A. No, sir; I was not present.

Q. So that all you know about it you get from what others told you?

A. Yes, sir; I get it from those I employed.

Q. What did you direct in reference to this force upon the wards to be done by them?

A. To ascertain the name of every man in the navy residing in the streets of Boston.

Q. To ascertain from where?

A. To ascertain the street and number to fortify this list.

Q. From what source were they to get this information?

A. By going to the houses where they reside.

152 Q. The men in your employ were to go to the houses and find who were residing in those places, who were in the navy?

A. Yes, sir; to locate the men where they resided.

Q. The number of men employed by Mr. Roberts you don't know?

A. No, sir.

Q. The whole of that work was done between the first of June and the 20th?

A. Yes, sir.

Q. That is, the list was completed on the 20th?

A. Yes, sir.

Q. That is, before the 20th; the date of the certificate is the 20th?

A. That is, about the 18th.

Q. That is, in less than three weeks?

A. Yes, sir.

Q. How much did you pay Mr. Roberts for this service?

A. I think it was some seven or eight thousand dollars.

Q. Have you no voucher for it?

A. I think I have.

Q. Can you produce it, sir?

A. I havn't it here now.

Q. Can you produce it so that we can have it to-morrow?

153 A. Yes, sir.

Q. Whatever you paid him you took a receipt for?

A. I think I did.

Q. And you think you have that receipt?

A. Yes, sir; I think I have.

Q. And you say you paid him for that service and for no other service eight thousand dollars?

A. I don't know but there was some other services.

Q. I want to know what you can say you paid for that service of less than three weeks in going about the wards.

A. I should have to look at my account. I think it was six or seven thousand dollars.

Q. For that service? There was nothing else included in it?

A. There might have been something else included in it.

Q. You won't swear that this six or seven thousand dollars did not include any other matters?

A. No, sir.

Q. What was his business then?

A. He was out of business then, I believe.

Q. Do you know how many men he had in his employment doing this work?

A. He had quite a large number of men.

154 Q. Did he report to you how many men he had?

A. No.

Q Didn't you inquire how many men he had?

A. I might have known how many men he had, but I don't recollect now.

Q. Do you recollect whether you know when you paid him the seven thousand dollars, if you paid them?

A. I think, if I am correct about it, I think I paid him so much a man for every man he found.

Q. His account was made up for so much per man?
A. I think there was something of that kind.
Q. Then the voucher will show?
A. Yes, sir; if I have the voucher in my possession.
Q. And you think you can produce that voucher?
A. I think I can.
Q. How many persons did you send to the receiving ship?
A. There was one person sent there. He made his arrangements with the clerks on board.
Q. Who was that person?
A. His name was Sherburne.

155 By the Court:

Q. What was his Christian name?
A. I don't remember his Christian name.

By Mr. Abbott:

Q. Where is he now?
A. I don't know where he is.
Q. When did you see him last?
A. About a month or two ago. I passed him in the street.
Q. He is living here then?
A. I don't know; I paid him all I agreed to.
Q. Did he employ the subordinates, or were they your employees?
A. He employed the subordinates.
Q. Do you know how many?
A. I don't know how many. I paid him the money for them.
Q. Have you no idea how many he employed to perform that labor?
A. As many as he could, and push the labor forward as rapidly as possible.
Q. When did they commence their labor?
A. Soon after the date of the contract, probably within a day or two of the date of the contract.
Q. But you were ascertaining the names of the men in the navy, and then, having got that information, then did you not give them to the clerical force to ascertain whether they were upon the lists of the navy?
156 A. He was comparing the names we found to reside in the streets of Boston, with the names that were found on the books of the ship.
Q. You could not make the comparison, could you, with the books, until you got the information by sending round the streets?
A. Yes, sir—no; we could not make that comparison.
Q. Then, in the first place, you were to get the names by going round the city, of persons who had enlisted, then give those names to the clerical force, and they simply ascertained whether those names were borne upon the lists of the ship? That was all their duty, wasn't it?
A. That was part of it.
Q. Was there any other duty for them to perform? I mean the clerks upon the receiving ship?

A. They were to copy off such names as we found that belonged to the city.

Q. Copy the names that had been given them by the force on the wards as enlisted in the navy?

A. If they found those names on comparing them with the lists on board.

Q. But they did not take any other names than the names furnished by your force on the wards, that is the clerical force on the receiving ship?

A. They acted independent of this force on the wards.

157 Q. Did they take any names, so far as you know, that were not furnished by the force that you had about the city to get the names of persons employed in the navy?

A. There was a comparison made. After we got the names of those men who resided in the streets of Boston, then we looked them over to see how many on this list compared with that.

Q. Well, you mean to say that you made that list before you got the list of names from your force on the wards?

A. This was going on at the same time.

Q. Does that list include any other names than those names that were obtained by your force put upon the wards?

A. Yes; there were a good many upon the list that we couldn't get any definite information about.

Q. On which list?

A. On this large list.

Q. How came they upon that list, if you had no information that they lived in the city of Boston?

A. It was a rule of the Provost Marshal's department that where a man enlisted, it should be prima facie evidence that he resided there, if there was no better claim to him.

Q. Precisely. I thought we should come to that. Then you made a list of all the persons on board who had enlisted from the city of Boston?

158 A. Yes.

Q. And that list is a list of the names of persons who appear to have enlisted from the city of Boston?

A. Yes.

Q. And there was no variation from that list from the information obtained by this clerical force put upon the wards?

A. There is a large number of names on this list that resided in the streets of Boston.

By the Court:

Q. Was this large list made before you got the report from Roberts and his men of the names collected from the wards?

A. They were being copied at the same time, and arranged and struck off.

By Mr. Abbott:

Q. Now, Mr. Burrill, this is true, is it not, so far as you know, that these two large lists, together called No. 1, contain all the names upon the receiving ship, where it appeared that they enlisted in Boston?

A. Yes, sir.

Q. And it contains no other names?

A. It does not contain all, because there are some twenty odd thousand. There are only 6,101.

Q. How did you make that list out, taking those 6,000 from 21,000?

A. The clerical force selected them. They examined them, and followed out the rules which I gave them.

159 Q. What were the rules you gave them?

A. To ascertain, as near as practicable, the names of the men belonging to the city of Boston.

Q. And they had before, until they got the reports from Roberts, only the books of the receiving ship?

A. Yes, sir; that is all.

Q. On the books of the receiving ship, don't you know, there is no residence given of any particular person?

A. I understand that.

Q. Merely the place of enlistment?

A. Yes, sir; and the place of birth.

Q. How did that enable you then to make the selection of these 6,000 from the 21,000, as belonging to the city of Boston, or enable your clerks to from any rules you gave them?

A. I don't know exactly by what rule they did it; they did the best they could.

Q. And acted simply upon the evidence upon the books of the receiving-ship that everybody could have?

A. They acted upon them and through the different rendezvous, and got all the information they could concerning the names of the men who had enlisted.

Q. Was that list changed in any way from any information, so far as you know, obtained from Roberts?

A. In many respects, I think it was.

Q. Tell me where it was changed.

A. I don't know as I can, now.

160 Q. Is there any variation, erasure, or change upon the list?

A. No. No erasure upon the list; but there were erasures made of various names for various purposes and various objects.

Q. Was any other list ever shown to Mayor Lincoln or the commission?

A. No, sir; only these two lists.

Q. Then these are as originally made out?

A. Yes, sir.

Q. And these are the lists made by your clerical force?

A. No, sir; these are copies.

Q. Where are the originals?

A. I don't know.

Q. When did you last see them?

A. About three years ago, when the work was going on.

Q. These are the only lists that you ever produced to Mayor Lincoln or the commission?

A. These are the results of my labor.

Q. The only lists produced?

A. Yes, sir.

Q. Are you sure there were 21,000 names on the books of the receiving-ship, as enlisted from the city of Boston?

A. No, sir; I did not say enlisted from the city of Boston.

161 Q. Enlisted in the port of Boston?

A. Yes, sir.

Q. And you can give us no better account of how you made the selection of these 6,000?

A. I did not go into the detail of the duties of the service. I only had it done in a general way, and hired it done. I was not capable of performing all this clerical service, in connection with this matter, and left it to others to do.

Q. The men employed by this person you do not know?

A. I do not know.

Q. How many you do not know?

A. I do not know.

By the Court:

Q. Are the names upon the books of the receiving-ship much larger in number than upon your list?

A. Yes, sir.

Q. How was it determined whether any particular name was drawn from New Bedford or Boston?

A. Well, here is "John Brown." We find that "John Brown" lives down at 120 Ann street. We find on board the receiving-ship "John Brown," and he appears very nearly of the age of this "John Brown" down in Ann street, and his complexion and size, and from what knowledge we get on board the receiving-ship we think it is the same man, and it is so reported on board the receiving-ship,

162 and we put it down.

Q. Then how could you commence making this list until you got this list from the wards, to show that "John Brown" was in Ann street?

Mr. Butler. He does not say that he made this list, but the list from which this list was copied, after the thing was ended.

A. I could not do the clerical labor myself, it was impossible. I don't know how it was done.

The Court. Of course not; I want to see the principle.

Q. By Mr. Abbott. I will put the question. Can you tell upon what principle your clerical force made a start and selected any names until they got some report from your force put on the wards?

A. Perhaps they might have got a report, and perhaps not. I cannot tell how it was.

Q. Whether these lists were connected in any way by any information you obtained from the ward force?

A. I think they were.

Q. Can you tell me any names that were stricken off?

A. I so understood. There was a direction I gave in the matter, and I presume it was observed. That direction was this; to ascertain as many men as there were residing in the streets of Bos-
163 ton as possible, in order to fortify this list, and see from the navy lists whether there were 1,200, 1,500, 2,000, or 3,000 on those lists, residing in our streets. I did have, at one time, a large number of names, residents, and all that sort of thing.

Q. Then you have three thousand men of whom there was no evidence that they resided in Boston?

A. Yes. These are foreigners, so the clerical force report; foreigners who, if they reside anywhere, reside in Boston. They enlisted here, which the Sec. of War makes prima facie evidence.

Q. That is, you took these without any evidence other than appears upon the books of the receiving ship?

A. That and the rendezvous.

Q. You did not strike off any names by reason of any information you got from the wards?

A. I don't know of any being stricken off.

Q. And you do not know the names of any of the clerical force except the principal ones employed?

A. I have given the names of those who had it in charge.

Q. Only one you recollect?

A. He had that whole matter in charge.

Q. You do not recall any other?

A. No, sir.

164 Q. Do you recollect how many there were?

A. I heard at the time; seven or eight, I think.

Q. Did you go over there to see how many were on board the "Ohio?"

A. Yes, sir; I was over there.

Q. How many were there?

A. I saw ten or a dozen at work making these copies.

Q. How much did you pay this person whom you employed for the work done in this less than three weeks?

A. I should think from three to five thousand dollars.

Q. Did you get a voucher for that?

A. I may have had a voucher; but I don't know whether I have got it now.

Q. Don't you know whether you paid from three to five thousand dollars for less than three weeks' work without a voucher or not?

A. I did not take a voucher; but I requested that a voucher should be taken. Whether there was one taken or not, I don't know.

Q. Did you pay it yourself?

A. I paid it myself. I paid the money to Mr. Sherburne; gave him from three to five thousand dollars to pay for clerical services on board that ship.

Q. For that and nothing else?

165 A. I don't know all that was done.

Q. It was for what these employees did in reference to getting up these lists on board the "Ohio?"

A. It was for work done by these clerks in getting up this list?

Q. What I want to get at is, can you say what you paid Mr. Sherburne for the work done by him and his employees upon the "Ohio," in this less than three weeks in getting up this list?

A. I don't recollect now. It was from two to three or four thousand dollars.

Q. Is that the nearest you can put it, from two to three or four thousand dollars?

A. That is the nearest I can put it now. I may give it more accurately.

Q. You think you have the voucher?

A. I think I have, sir.

Q. What is your best belief? Have you a voucher for that?

A. Possibly I may have.

Q. Don't you recollect taking a voucher when you paid so large a sum as that for less than three weeks' work?

A. I might have taken one. I don't remember distinctly about that now.

Q. That is not the question now. Don't you recollect
166 whether you took any voucher when you paid him this considerable sum of money?

A. I know I paid him a considerable sum of money.

Q. Did you take any voucher?

A. I don't remember whether I did or not.

Q. You will look and see if you have such a voucher?

A. I will look and see.

By the Court:

Q. Are these claims paid, or do they remain unpaid?

A. I have paid them.

By Mr. Abbott:

Q. And that was all the work that was done, was it not, sir, up to the getting of those lists?

A. Yes, sir; that was all the work done in copying those lists.

Q. In getting those lists in any way, getting the information upon which the lists were made, was there any other work done for which you paid except what we have gone into?

A. I think there was.

Q. What was it?

A. I don't recollect. If I had supposed we were going into that I would have ascertained.

Q. What was the other work about?

A. I think it was copying these lists, and checking them
167 over.

Q. That was done by the commission, wasn't it?

A. No, sir; these lists were made up as I remember; the clerks copied from the records, and then these were copied by other clerks.

Q. That is, it was done by other parties than these clerical people of whom you have spoken?

A. Yes, sir.
Q. Who were they?
A. As I say, Mr. Sherburne procured that to be done.
Q. Was there anybody else you employed in connection with these lists on board the "Ohio?"
A. Yes, sir.
Q. Who was the person?
A. I have forgotton his name; he was on board the "Ohio."
Q. What was he employed to do?
A. Well, general superintendence; looking after this matter.
Q. He was with Mr. Sherburne, was he not?
A. No, he was not with Mr. Sherburne; he was a more thorough man in overlooking the correctness of this work.
Q. He overlooked Sherburne's work?
A. Yes, sir.
Q. What did you pay him?
168 A. I have never paid him anything, but I have promised to pay him.
Q. What did you promise to pay him; what was the agreement or contract between you?
A. I think the understanding between him and myself was that he would leave the matter entirely with me to do what was equitable and right hereafter.
Q. Have you ever promised to pay him anything?
A. Not any fixed sum.
Q. Who was that person?
A. I have tried to remember his name, sir, but I don't remember him now.
Q. What was his business?
A. He was clerk on board the "Ohio."
Q. He was a clerk in the employ of the gov't?
A. No, not as I understood him; he was not in the employ of the gov't, but connected with some officer; clerk of some officer.
Q. He was a clerk in the employ either of the gov't or of some officer on board?
A. Yes, sir; I understood so.
Q. And you employed him to overlook Mr. Sherburne?
A. Yes, sir, to overlook the whole matter.
Q. And while he was there in the employ of some one on board the ship, you were to give him what you thought right, but you never fixed upon any sum?
169 A. Yes, sir, I think I have, (come to think of it;) I think I have paid him a thousand or fifteen hundred dollars for work in ovelooking this thing.
Q. What was that work?
A. There is a great deal of work in connection with this matter that I do not understand myself.
Q. Was it any other work as you understand except overlooking the copies made by Sherburne and seeing they were correct?
A. There must an examination take place of the enlistments to ascertain as near as possible where they belong.

Q. An examination of the books?
A. Yes, sir; the enlistments and so on.
Q. And this work was done in connection with the work done by Mr. Sherburne?
A. Yes, sir.
Q. You think upon reflection that you gave him a thousand to fifteen hundred dollars?
A. Yes, sir.
Q. How does it happen that you thought you had not paid him anything and there was an unliquidated sum which was to be left to your generosity?
A. There is a sum unliquidated now.
Q. Is there any receipt for that thousand or fifteen hundred dollars?
170 A. I don't know as I have his receipt.
Q. How many days was he employed?
A. From the 1st of June up to the 18th.

By the Court:

Q. Don't you know where he is now?
A. No, I don't know.
Q. Have you ever seen him since?
A. Yes; a year two ago.
Q. Where did you see him?
A. Here in Boston.
Q. What was his age?
A. He was a man about thirty years old.

By Mr. Abbott:

Q. He has not been to see you within two years past to make a demand for the balance?
A. No, sir; not in regard to this.
Q. He has not been near you within two years past for any money?
A. I think on reflection I saw him at the trial at Dedham; I think he was there.
Q. Did you summon him there as a witness?
A. No, sir.
Q. What other person was there, if anybody, to whom you paid money for these 18 days' work more or less?
A. I think I have stated substantially about all I have paid any money to.
171 Q. Is there any other human being to whom you now recollect having paid or agreed to pay any money for these 18 days' work?
A. No; there is none other than what I have mentioned that I remember about now.
Q. Then after getting these lists as they were brought to the mayor's office, they have never been changed in any way since, so far as you know?
A. No, sir; I don't think they have.

Q. And you could not get an enrollment without a certificate made by the mayor, could you, sir?

A. I suppose that course is usual in such cases.

Q. Didn't you know you could not get an enrollment without the certificate of the mayor?

A. No, I didn't know that.

Q. Didn't you apply to get an enrollment?

A. No, sir; this certificate was annexed to the list before I applied for the enrolment.

Q. You did not apply until after the certificate was made?

A. No, sir; the papers show that for themselves.

Q. The enrolment was not allowed, the papers show; but you never made any application to the Provost Marshal previous to the enrolment for an enrolment when it was refused?

A. I never made any application to the Provost Marshal for an enrolment until the latter part of July; about the date of the enrolment.

172 Q. When you went to Washington, you say you employed persons to get through this act of Congress?

A. I obtained persons to assist.

Q. Who were they, sir?

A. Mr. S. P. Hanscom had the general management of that, sir.

Q. Who else did you employ, sir?

A. No one else but him; he employed the others.

Q. Do you know of any person else who was employed?

A. I can't say that I know myself; only from him, that's all.

Q. You had no communication with anybody else?

A. No, sir.

Q. What, if anything, did you pay him for his services?

A. I paid him some money; and I have given him my obligation.

Q. What did you pay him in the first place, if you paid anything to him?

A. I think it commenced with some thousand or fifteen hundred dollars in the first place.

Q. How much in all?

A. I think the amount I have paid him in money and what I have promised him amounts to $52,000.

Q. I ask you what you have paid him?

A. My impression is from $3,500 to $4,000.

Q. When did you pay him that?

A. Some time in June or July of that year.

173 Q. Before or after the passage of the act of July 4th?

A. I think part of it was before and part after.

Q. Do you know what became of that money?

A. No, sir.

Q. What was it paid for by you?

A. Paid for his services in aiding in getting the act through.

Q. Do you know whether it was to be used for any purpose except that purpose?

A. No, sir; for nothing but his services.

Q. And of such other persons as he might choose to employ, but those persons you do not know?

A. No, sir; I do not know.

Q. You say you have given him an obligation to pay him something more?

A. Yes, sir.

Q. When did you give him that?

A. About the time when I was at Washington.

Q. Do you mean by an obligation, a note or a bond?

A. An obligation in writing.

Q. A sealed instrument?

A. I don't know about a sealed instrument. It is an obligation.

Q. Are you to pay it absolutely, in all events, without any reference to whether you recover or not?

A. I don't remember the exact wording.

174 Mr. Butler. I think the contents of the paper must be proved by itself.

The Court. It is true the witness upon the stand is a party to the suit, but the objection being made, we are inclined to think the same rule must apply. You cannot put in the contents.

Q. Was there anything else you paid for—any other services?

A. No, sir; I have not paid any other services.

Q. Promised to pay any other services?

A. Yes, I believe there are some promises to pay.

Q. To whom, and for what in connection with these lists and getting these allowances?

A. I don't remember any other promises.

Q. You have given us all the promises?

A. I don't say I have given them all, but all I at this moment recollect. I don't say I have given them all. There may be others yet.

Q. How many days were you at Washington the first time?

A. I was there from about the 23d of June until the 5th of July, I think it was.

Q. That is you left Boston soon after the 20th, and returned immediately upon the passage of the act?

A. Yes, sir.

Q. Then you returned to Washington soon?

175 A. I returned to Washington the latter part of July, if I recollect rightly.

Q. How long did you remain at that time?

A. I remained at Washington not more than a day or two, or two or three days.

Q. Then you returned a third time, if I understood you on your examination in chief?

A. I went the 23d of June, and came back the fore part of July; went back the latter part of July, and returned the fore part of August. I have been twice to Washington. I don't recollect now of swearing to three times.

Q. You now recollect only twice, and you have given us the length of time you remained on each occasion?

A. I don't remember, sir, whether it was two or three times, unless you can recall something to my mind, so that I can recollect.

Q. You don't remember now but twice?

A. I don't remember now but twice. But there was a time when I got blockaded at Baltimore, and this list was thrown overboard at Baltimore, and here is the impress here; and whether that was the third time or not I don't remember. That was the time the rebels came up there and burned the bridge.

Q. All I care about is to have your best recollection.

176 A. I can't swear whether it was two or three times. I had the impression when I spoke first, it was three times.

Q. But you cannot now recollect but two?

A. I cannot now recollect but two.

Q. Did you present these lists to the commissioners when you returned the second time.

A. The last time I returned, the latter part of July, or the fore part of August, I presented the list at the State House to the commissioners.

Q. To which of them, or both?

A. They were not present but very seldom, but they had clerks, there, and I presented it to one of the principal clerks, and left it as the official list of the city of Boston.

Q. Were either of the commissioners present?

A. I think they were not.

Q. You spoke of going to Washington for the purpose of preventing Governor Andrew having an improper influence in reference to these allowances?

A. Yes, sir.

Q. When was that?

A. That was the latter part of July.

Q. Before you presented these lists?

177 A. No, it was not before; that happened I think about the last time I was there; that was the time this was directed to be referred to them.

Q. You had these lists with you when you went to Washington?

A. No. sir.

Q. Had you presented them before you went to Washington?

A. No. sir. I have got confused about the number of times I went to Washington. I can't remember. I think I left here the 22d of June, at the time this letter was written. That brought me in Washington about the 23d or 24th. I think it was only twice, sir.

Q. This is quite certain, is it not, that after you presented to the commission these lists, you never took them from the commission to take to Washington?

A. No, sir.

Q. When did you learn from Gov. Andrew, if you learned from him at all, that he was about to allow all these names to the State at large?

A. I learned in Washington, from Secretary Stanton, that that was probably what he would do.

Q. You did not learn it then from Gov. Andrew, here?

A. No, sir.

178 Q. You did not go to Washington, then, to prevent that being done?

A. It came to my knowledge there and I took measures to prevent it.

Q. But I understood you to say that you went to Washington for the purpose of preventing that?

A. I don't think I exactly stated so. I went to the President of the U. S.

Q. You did not know, then, when you went to Washington, that there was any intent or purpose on the part of Gov. Andrew to have these credits allowed to the State at large?

A. I didn't know about any intent on his part of that nature, and don't know it now except what I heard there.

Q. Why, then, pray, did you go to Washington the second time?

A. It was suggested that we had better have these men enrolled. The President had given an order to credit the men, leaving it to Provost Marshal General Frye to determine the residence. He could not determine the residence and said they had better be enrolled in Boston. I went and got them enrolled, and then, instead of carrying out the order to credit these men to the quota of Boston, they said they were going to refer this matter to Andrew and Clifford to determine their residence and let the lists go through that ordeal.

179 Q. And you went to Washington, having obtained this enrolment, for the purpose of getting the allowance there?

A. Of getting the allowance there, and they were virtually allowed.

Q. And then you were informed that Gov. Andrew had this intention and purpose?

A. Yes, sir.

Q. And then it was that this paper, which you have spoken of as an order, was given?

A. That paper of the President's was given about the 25th or 26th of June, somewhere along there.

Q. That paper which you call an order?

A. An order, or whatever you may call it.

Q. That was before, then, you had heard any possible suggestion about Gov. Andrew's meaning to credit these at large. That was before the act was passed?

A. That was before the act was passed.

Q. Then there was no suggestion about the intention of Gov. Andrew to credit these to the State at large, except the last time you went to Washington?

A. No; it was the last time I went to Washington.

180 Q. Then I understood you that that order was given with reference to this very understanding, that Gov. Andrew intended to credit these men to the State at large?

A. I don't know how you understood anything. The order was, "Credit these men to the city of Boston." That was somewhere about the 25th of June.

Q. Was there any paper given by the President, which you called "the order," in connection with the information which you had, that

Gov. Andrew was going to object to the allowance of these credits to the city, the governor claiming them for the State at large?

A. I never learned that until the latter part of August.

Q. Then this paper which you called "the order" had nothing to do with that?

A. Nothing whatever. It was entirely independent of that.

Re-direct.

By Mr. Butler:

Q. I understood you to say, on your direct examination, that you went to the President after you learned that Gov. Andrew was about to interfere?

A. Yes, sir.

Q. Did you then obtain any paper or direction?

A. I obtained a direction from the President, verbally, to the Secretary of War, that if these credits were credited to the State
181 of Massachusetts at large by this commission to disallow the report.

Q. Now, we will go back to the question about the Rock Island men. You say you stated to the mayor that there were men on board the receiving-ship belonging to Rock Island?

A. No, sir.

Q. They had come from Rock Island?

A. Yes, sir; they were from Rock Island and on board the "Ohio." The men claimed that they belonged to the city of Boston.

Q. And you so informed the mayor?

A. Yes, sir.

Q. And you then made the contract, and then you went on board the "Ohio," and Judge Abbott asked you if you made any attempt to get those men?

A. I did, sir.

Q. Why did you not get them?

A. Because measures had been taken to get them credited on the quota of the city of Boston. I inquired of Alderman Messenger, and he told me that he had got them credited.

Q. That he had gone there and got them credited to the city of Boston?

A. Yes, sir.

Q. And they having been already credited, you did not put them on your list again?

A. No, sir; I did not.

182 Q. Was that the reason you did not get these Rock Island men credited?

A. Yes, sir.

Q. Is Alderman Messenger still alive?

A. I presume he is, sir.

Q. You were asked about employing your clerical force upon the wards. State whether you employed Roberts to get these men for so much apiece.

A. For him to approximate as nearly as possible to so much a head for what he did.

Q. And he was to employ the men to help him?

A. Yes, sir.

Q. You have told us that the lists on the receiving ship, and those lists made out in the wards, were going on at the same time. When got together the lists were compared, and then all copied on this one, which was the one finally presented to the mayor?

A. Yes, sir.

Q. And you made out the men as well as you could from all the evidence you could get?

A. Yes, sir.

Q. If you look on the back of that, do you find that on the 18th of June Mayor Lincoln swore that every one of these men belonged to the city of Boston, and was subject to military duty therein?

A. It was on the 20th.

Mr. Curtis. Do you mean to say that is so?

183 Mr. Butler. Yes, sir, (reading,) "I, F. W. Lincoln, jr., mayor of the city of Boston, hereby certify that the above-named men are, to the best of my knowledge and belief"———

Mr. Curtis. "To the best of his knowledge and belief;" you did not put that in.

Mr. Butler. (Continuing,) "legal citizens of said city, and liable to military duty therein.

(Signed) "F. W. LINCOLN, JR.

"Personally appeared the above-named F. W. Lincoln, jr., and made oath that the above certificate, by him signed, is correct and true, to the best of his knowledge and belief.

"Before me.

"JAMES M. BUGBEE,
"*Justice of the Peace.*"

Q. James M. Bugbee was the mayor's clerk?

A. Yes, sir.

Q. Had Mr. Lincoln any ground for his "knowledge and belief," other than what you told him?

A. I think not.

Q. Then, upon his examination, he was enough satisfied that you was correct to swear to it?

A. Yes, sir.

Q. Did he make any objection to swearing to it, on the ground that you didn't know that these men were from Boston?

A. No, sir; he did not.

184 Q. Any hesitation on his part in taking the oath?

A. No, sir.

Q. On the strength of his oath, were these men allowed to Boston?

A. I can't swear to that, sir.

Q. Mr. Hanscom was editor of a newspaper in Washington, wasn't he?

A. Yes, sir.

Q. And I suppose, in common language, he was to employ the lobby members?

A. Yes, sir.

Mr. Abbott. We are not familiar with that matter, and perhaps it would be better to let the witness state what was done, rather than have Mr. Butler put the words into his mouth.

Mr. Butler. I only wanted to get the right word in.

Q. And you made the best agreement you could, and in consequence of that agreement, got this law through?

A. Yes, sir.

Adjourned.

185 *Testimony of Wm. H. McCartney.*

Q. You are collector of internal revenue in the 3d district in this city?

A. Yes, sir.

Q. At the time of the transaction we have been speaking of you were provost marshal of one district?

A. I was prov. marshal from the 27th of February, 1865, until Dec. 31, 1865.

Q. As such prov. marshal did certain records of the office come into your hands?

A. Yes, sir.

Q. I asked you to examine these papers yesterday, ["Returns of quotas and credits under the calls of 1864, of sub-districts of the 3d and 4th districts,"] and make some figures from them which would save the court and jury the trouble of examination. Can you give me the deficiencies of the city of Boston on the 31st of May in the quota then called for?

A. Yes, sir. In the 4th dist. on the 31st of May the deficiencies amounted to 568 men; the surplus was 179; which taken from it, leaves the deficiency 389. In the 3d dist. at the same time, taking the surplus men from the deficiency, it leaves 212; making 601 total of deficiencies in the 3d and 4th dists of the city of Boston—that part of the dists. which include the city of Boston.

186 Q. Now take it on the 30th of June.

A. On the last day of June the balance in the 4th district was 167 of deficiencies. In the 3d dist. the balance was 91 the other way, making the balance of deficiencies in the two dists. 76. On the 31st of July there were no surplus men in either district. There were deficiencies amounting to 1,299 in the 4th dist., and 1,110 in the 3d dist., making 2,409, if I have added them correctly.

Q. How was it on the 31st of August?

A. On the 31st of August there were no surplus men in the 4th dist., but 1,114 deficiency. There were 1,000 deficiencies in the 3d dist. and 3 surplus, making 997; making the deficiency 2,111 in the city of Boston.

Q. You speak of "deficiency" and "surplus;" what do you mean by "surplus?"

A. These reports of quotas and credits give the number of men that the city is expected to furnish under the various calls. Some wards furnished men in advance, and those these papers put down as "surplus" men. That is to say that if the quota of a particular ward under a certain call was 50 men, and she should furnish within that time 70, 20 men would be surplus; if she furnished but 40 men she would be 10 short. All the wards are given here on this
187 paper. For instance take the 31st of May: ward I, in Boston, has 33 surplus; ward II is deficient 123.

Q. Then in making up the whole result, you adjust the deficiencies and the surplus.

A. I have made the balance.

Q. Were these reports that you have there in your hand made each month to the prov. marshal?

A. Yes, sir.

Q. We have heard that certain allowances were made on the 5th of Sept. How did the account stand the first of October?

A. The last day of September, the reports show that there was no deficiency either in the 4th or 3d dist., but there was a surplus in the 4th dist. of 2,261, and a surplus in the 3d dist. of 2,819; and the credits given in that month are: in the 4th dist. 2,969, and 3,609 in the 3d.

Q. Making the total of credits how much?

A. 6,578.

Q. When was the next call made after the last of September?

A. I am not able to state, sir.

Q. How far down your returns go?

A. These returns of quotas and credits come down to the 31st of Oct., 1864, but I have not put them into the form of a tabular statement any later than September.

188 Q. Where were you in 1864?

A. In Virginia.

Cross-examination.

Q. These papers and tabular statements that are put in here begin May 31st—that is for the month of May?

A. Yes, sir, 1864.

Q. Giving the account of the quota for each of the wards of the city?

A. Yes, sir.

Q. On each of the calls?

A. Yes, sir.

Q. That is, you have the quota under the call of Feb. 1, 1864, and of March 14, 1864; then when you come into August you have the quota under the call of July, 1864?

A. Yes, sir.

Q. And you give the assignments in the first place to each of the wards. There are so many called for from each of the wards?

A. Yes, sir.

Q. The wards, as I understand, making the sub-military districts?

A. Yes, sir.

Q. Then credits are given by all the enlistments from the wards of volunteers from the wards?

A. Yes, sir.

189 Q. So that if one ward gets her supply under the call, and there is not a full supply from other wards, there will be a draft in the ward where there is a deficiency, and no draft from the wards where they have supplied the quota in full?

A. Yes, sir.

Q. Taking the whole city of Boston together—to make the matter plain—if there is a deficiency from all the wards, but half the wards have filled their quota, there will be a draft only in those wards that have not filled their quota, and not through the city of Boston generally?

A. That is correct.

Q. You had no record whatever, so far as the provost marshal's records were concerned, of the city as a city, but only of the wards?

A. So far as those records were concerned, they relate to the 3d and 4th congressional districts.

Q. The congressional districts being military districts, and the wards the sub-divisions of the military districts so far as Boston is concerned?

A. Yes, sir.

Q. Therefore, so far as your knowledge goes and so far as you can see from the records, there is no record of the city of Boston as a municipality?

A. So far as the records are concerned, that is a fact.

190 Q. If one ward had filled its quota, the draft would not take place there; and if another ward had not filled its quota, a draft would be had?

A. The prov. marshals were prov. marshals of the 3d and 4th dists., who were directed by orders from the department to subdivide their districts as they chose, and they usually fixed the boundaries of the subdivisions by the wards.

Q. And in this case they were fixed by the wards?

A. Yes, sir.

Q. In the 4th congressional dist. there was a large surplus?

A. It shows there. [On return.]

Q. On the 31st of May there appears to be a surplus in wards 1, 3, 4, and 5 of the 3d congressional dist., so that this deficiency of 601 is made up and more than made up in two wards of that dist.?

The Court. The whole city contains 12 wards?

Deft. Yes, sir.

The Court. How many wards in dist. 4?

Deft. The 4th dist. was made up of wards 1, 2, 3, 4, 5, 6, and 9, and the deficiencies in the 4th dist., May 31st, were in wards 1, 2, 3, and a surplus in wards 4, 5, 6, and 9.

Q. That is true, is it not, sir?

A. Yes, sir.

Q. And in the 3d dist. a surplus in wards 4, 8, 10, and 11,
191 and a deficiency in ward 2 and in ward 13?

A. Yes, sir.

Q. Then, as I understand you, on the last day of June [made up to the first day of July] this deficiency of 601 was already absorbed by the regular enlistments except 76?

A. Yes, sir.

Q. On the last day of June there was a surplus in the 3d dist. in ward 4 of 39, ward 8 of 20, ward 10 of 42, ward 11 of 174?

A. Yes, sir.

Q. The whole together making 275?

A. Yes, sir.

Q. There is a deficiency in ward 7 of 72, and in ward 12 of 112, making 184?

A. Yes, sir.

Q. That leaves a balance to the credit of the whole dist. of 91, does it not?

A. Yes, sir.

Q. Then in the 4th dist. you have in ward 1 a deficiency of 137; ward 2, 98; ward 3, 147; making 382?

A. Yes, sir.

Q. Then in ward 5 you have surplus of 40; ward 6, of 92; and in ward 9, of 83; making 215?

A. Yes, sir.

Q. Leaving a deficiency of how much?

A. 167. Deducting 91 from that leaves 76, the total defi-
192 ciency of the entire district?

Q. On the 18th day of July there came another call for troops, did there not?

A. Yes, sir.

Q. And the amount of that call for the wards of Boston in the 3d dist. was 2,038, as given here?

A. Yes, sir.

Q. And in the 4th dist.?

A. 1,708.

Q. So that the deficiency you have given on the last day of August included all the deficiencies on the former calls and also this call of July 18th?

A. Yes, sir; the total deficiencies under all calls, as the paper itself purports.

Q. Have you any means from this paper of telling what credits were obtained between the 1st of July and the 18th of July, the date of the call?

A. From those papers it is impossible for any one to tell.

Q. And I suppose it is impossible to tell precisely?

A. It is impossible to tell from anything that I have now.

Q. You can tell us, however, the amount of enlistments during the month of July up to the 31st day of July?

A. Yes, sir.

193 Q. Won't you give us the amount of the enlistments—taking the 3d dist. in the first place—during the month of July?

A. During the month of July, in ward 4, there were 38 army enlistments, 2 navy and marine enlistments, 69 substitutes for enrolled men. Ward 7, 21 army enlistments, 5 navy and marine, 25 credits by the draft, 21 substitutes for enrolled men. Ward 8, 48 army enlistments, 20 navy and marine, 44 substitutes. Ward 10, 43 army enlistments, 43 substitutes. Ward 11, 98 army enlistments, 12 navy and marine, 201 substitutes. Ward 12, 56 army enlistments, 10 navy and marine, 71 substitutes. Here are all the wards in that district.

Q. How much does it all foot up in the dist.?

A. The army enlistments foot up 304; navy and marine, 49; credits by draft, 78; substitutes for enrolled men, 449.

Q. How much in the whole? The whole is figured up, is it not?

A. Total credits by enlistments and drafts, 431.

Q. And the substitutes?

A. 449. (Total, 880.)

Q. Will you give us the same details in reference to the 4th dist.?

A. 4th dist., ward 1, army enlistments, 36; navy and marine, 19; credits by draft, 42; substitutes for enrolled men, 19. Ward
194 2, army enlistments, 31; navy and marine, 4; credits by draft, 55; substitutes, 25. Ward 3, army enlistments, 34; navy and marine, 7; credits by draft, 44; substitutes, 9. Ward 5, army enlistments, 58; navy and marine, 5; substitutes, 18. Ward 6, army enlistments, 53; navy and marine, 6; substitutes, 31. Ward 9, army enlistments,, 48; navy and marine, 1; substitutes, 14.

Q. Making how many?

A. Making 260 army enlistments; 42 navy and marine; 141 credits by draft; 116 substitutes for enrolled men. (Total, 559.)

Q. But how these were apportioned during the month of July you have no means of telling?

A. Nothing more than that I knew they were obtained in that month.

Q. Now can you give us the date of the draft?

A. Of my own knowledge I don't know that there was a draft at that time.

Q. It appears upon the records of the office?

A. The records of the office show that there was a draft in the 3d dist., and 25 men obtained in ward 7, and 53 in ward 12.

Q. And the records give the date of that draft?

A. No, sir.

Q. These records here may not; but can't you ascertain?

A. All the records in regard to the draft have been trans-
195 mitted to Washington, and were before I was relieved.

Q. All that appears from the records now is that during that month there was a draft, and so many obtained by that draft?

A. That is correct.

Q. That is, there was a draft in two wards—in one ward in each district?

A. Yes, sir.

Q. To go now to Sept. 30. Are the credits in red ink here (in reports) the particular credits given at this time, Sept. 5th?

A. Yes, sir.
Q. Amounting to, in the 3d dist.?
A. 3,609.
Q. And the 4th?
A. 2,969.

By the Court:

Q. Making 6,578?
A. Yes, sir.
Q. Now tell us from that, if you can, sir, how many enlistments, substitutes, &c., during that month of September were obtained?
A. Aside from the navy credits, in the month of Sept., the army enlistments in the 3d district amounted to 117 men. There is no means of determining how many navy and marine credits were obtained outside of those particular credits, inasmuch as there
196 is only one column given. All the navy and marine credits in that month allowed are in one column, 6,578.
Q. That includes those particular credits, and all naval credits, during that month?
A. Yes, sir.
Q. Are there any other credits of substitutes?
A. Yes, sir; 90 substitutes in the 3d dist.—117 and 90 outside of the naval credits in the 3d dist.; 135 army enlistments in the 4th dist.—16 credits by draft, and 53 substitutes, outside of the naval credits—2,969.
Q. I see you give a credit by draft; it appears then there was a draft?
A. It does not follow because there are credits by draft in these months that was a draft; because the draft might have taken place, for instance, in August, and some of the drafted men might have gone to Canada, and when they came back they were picked up and put in for that particular month. Some of them had a habit of going to Canada at that time.
Q. So that you have no means of telling whether there was a draft in the month of September or the month previous?
A. I mean to say that it does not show there was a draft in that month.
Q. And you have no means of knowing?
A. I have no means of knowing.
197 Q. Won't you give us the amount of credits that appear in the month of Sept., outside of the naval credits, in the two districts?
A. The army enlistments in Sept., in the 3d dist., were 117; substitutes, 90=207. These were all the men that were obtained in the 3d dist. in Sept., except 3,609 navy and marine credits.
Q. Now in the 4th dist.?
A. In the 4th district, in Sept., there were obtained 135 army enlistments; 16 credits by draft; 53 substitues.
Q. Making how many, in all?
A. 204.
Def't. And in that same month the navy and marine credits amounted to 2,966—making 6,578 navy and marine credits.

Re-direct.

Q. I desire to ask you if you can tell from this list what was the aggregate call upon the city of Boston, under the call of Feb. 1, 1864? I believe they called for 300,000 men. What was Boston's share of that? That is what I want to get at.

A. I am unable to state the proportion the city of Boston would have been obliged to furnish under the call; I can only state the number of men that she was obliged to furnish at particular times.

Q. Well, there was a call made Feb. 1, 1864; then one in March, 1864; and then one in July, 1864?

198 A. Yes, sir.

Q. Can you tell me how many men Boston was to furnish under each of these calls?

A. On Sept. 30, 1864, the number of men that Boston was liable to furnish, in all the wards, under the call of Feb. 1st, was 2,952. When the month commenced, the city of Boston, under that particular call, was short 2,952 men. That was the quota that Boston was liable to furnish at that time.

Deft. There is some misunderstanding about this matter.

Pl'ff. If you will allow me, I will state how I understand it. It is a matter of book-keeping at the prov. marshal's office. I understand this: That on the 1st of Sept. Boston was called upon to furnish so many men—that is her debit. Then, she has certain credits given, and on a given day they stand according to the number of credits on a given day. In this case, Boston had been called upon for these men, and she had not yet got credit for them. Now, let me state the reason for which we offer this evidence: The contract says that we are to be paid for the number of men we furnish upon the quota. Now, if we had furnished 6,000, for instance, and Boston had called upon for 4,000, we might bring ourselves within

199 the case of Eastman *v.* Shattuck, where it was decided that there must have been as large a call as the number of men furnished. I want to show, if I can, that the total of quotas and deficiencies of Boston, on the 30th of Sept., 1864, under the call of the government, was what, sir?

A. In Sept. the quota to be furnished by the city of Boston was 6,104, in the 3d dist., and 5,273, in the 4th dist.—making an aggregate for the city of 11,377.

Q. That was the total of all the calls and deficiencies up to that time?

A. The total of quotas and deficiencies.

The Court. I confess I do not quite understand you. On the last day of Aug. the deficiency in the 4th dist., 1,114, and in the 3d, 997?

A. Yes, sir.

Q. Making the whole deficiency, on the last day of Augnst, 2,101?

A. Yes, sir.

Q. Now, I understand this inquiry to be for the first day of September——

Pl'ff. The 30th of Sept. The difference is this ——

The Court. Let the witness explain it. (To witness.) Won't you explain that?

A. I will endeavor to.

Pl'ff. This was the number which the prov. marshal called
200 for from the city of Boston, and that is a matter charged against her, under the call of the President. She made it as well as she could, by enlisted men, drafts, substitutes, and credits. When the books came to be balanced, another result appears. The charge against her—the quota she was to furnish—is this, as I understand it——

Witness. The quota is continually carried along.

The Court. It is the debtor side of the account?

Witness. Yes, sir. By reference to these papers, it will be seen that they include the month of August, and the quotas are carried along precisely the same as we find them in the month of September, because these quotas were continually carried along, and credits given from time to time as they were obtained. The quota was carried along until it was closed, and then it was dropped, and that call was filled. So that you will see in August precisely the same figures, as to quotas, that you find in Sept.

By pl'ff:

Q. You have no means of telling, in the months you have been talking about, whether these were navy and marine enlistments or only credits?

201 A. O, yes; they were navy and marine enlistments—those small amounts I have given. These columns show credits by voluntary enlistments, under one head; army enlistments under another head, and navy and marine enlistments.

Q. Under what head do navy credits come in as such?

A. They come in under a special head. There is a minute of credits in red ink of those allowed under section 8. That minute was made at the Prov. Marshal General's Office, Geo. Clark, and sent down to the different prov. marshals. That is the only way they could be designated.

By def't:

Q. In all these papers that you have put in, if you examine, don't you find that the call, say for February, March, and July, is carried along, the full amount of the call, without any reference to whether it has been filled or not?

A. Yes, sir; that is what I have stated.

Q. I understood you to say that when the quota was filled under one call, then the quota was dropped; but you find here, beginning May 31st, the quota entered of Feb. 1st, and the quota of Mar. 14th, don't you, sir?

A. Yes, sir.

Q. Although one half of the wards in each of the districts had more than filled both these quotas at that time, May 31st?

A. Yes, sir.

Q. Now take the next one, June 30; don't you find the calls

202 of Feb'y and March carried along, although they were filled a month before?

A. Yes, sir.

By pl'ff:

Q. But the whole quota of the city had not been filled at any time?

A. I ought to explain on my own account. The drafts were never considered filled until the quotas of all the subdivisions, all the wards in the congressional districts had been filled; a quota was not considered closed as long as any of the wards were deficient, although some of the wards were in advance all the way during the war.

Q. The quota was not considered filled until the entire prov. marshal's dist. was filled?

Until in the entire congressional district the call was filled. The quotas were carried on although the subdivisions had been filled entirely. The subdivisions were given credit in advance; that is what "surplus" means.

Q. So that, to illustrate, if the military sub-districts in Boston had filled their quota upon each call and the quota of the congressional dist. remained in some other portion unfilled, the quota would be carried along in some of the other towns, for example, Roxbury, Brookline, Chelsea, or Cambridge?

A. If I understand the question, it is whether, if all the
203 wards of the city proper under the call of Feb'y, 1864, had a surplus of men, and Roxbury or Brookline was short, the quota would be considered as closed? No, sir; it would not.

Q. One of these military districts, aside from the city of Boston, includes Roxbury and Brookline; and the other Chelsea, Winthrop, and Cambridge?

A. Yes, sir.

Q. And no draft, I believe, was ever imposed upon any subdivision if that subdivision had filled the quota which it was called upon to furnish?

A. Of my own knowledge I do not know. I understand not.

By pl'ff:

Q. What would be the quota of Boston on a call of 300,000 men? (Objected to.)

I will come back and ask him how many would fall to all the citizens of Boston?

A. I could not answer that question.

Q. How many would fall to the districts?

A. I never computed it, sir.

Q. Can you compute it, sir?

A. I do not think I could; I havn't a basis to start upon.

Q. You could tell by the past ones, sir?

A. If there was any call for 300,000 men the records will show what Boston ought to furnish.

By the Court:

Q. I understand you are about to state what was done?

204 A. Yes, sir; if either one of these calls was for 300,000 men. I do not know whether there was or not.

The Court. You may ask him what were the proportions of Boston for such a call.

Q. What was Bostons's proportions in the call of Feb'y 1st, 1864?

A. In the 3d dist	2,952
In the 4th dist	2,598
Making an aggregate of	5,550

The counsel for the plaintiff offered in evidence the following proclamation of the President of the United States, which was read:

GENERAL ORDER No. 35. WAR DEPARTMENT, ADJ. GENERAL'S OFFICE, *Washington, Feb.* 1, 1864.

The following is an order of the President of the United States:

EXECUTIVE MANSION, *February* 1, 1864.

Ordered: That a draft for five hundred thousand men to serve for three years or during the war, be made on the tenth day of March next, for the military service of the United States, crediting and deducting therefrom so many as may have been enlisted or drafted into the service prior to the first day of March, and not here-

205 tofore credited.

ABRAHAM LINCOLN.

By order of the Secretary of War:

E. D. TOWNSEND, *Asst. Adj. Gen'l.*

The counsel for the plaintiff then offered in evidence and read a proclamation of the President of the United States on the 19th day of December, 1864. 13 Stat. 750.

The counsel then called the attention of the court to chap. 91 of the acts of 1863, of the State of Massachusetts, (page 194 of the supplement to the gen. stat,) approved March 17, 1863.

References were made to other stats. the sections of which were read as follows:

Acts of 1863, page 240, Nov. 18, (sections 1 and 8;) same volume, page 253, ch. 103 § § 1, 2, Mar. 18, 1864; same volume, page 255, ch. 120, Mar. 28, 1864; acts of 1865, page 378, ch. 108, Mar. 27, 1865.

The counsel also remarked that it might be desired to make a reference to 12 Stats. at Large, 731, (Mar. 3, 1863.) The only thing which the counsel desired to cite therefrom, was that it was made the duty of nobody to ascertain the credits that the town ought to have.

206 The plaintiff resting his case here, the counsel for defend-

ant submitted the following motion in writing: "And now at the close of the evidence offered by the said plaintiff, the defendant moves this honorable court to instruct the jury that the evidence exhibited and given to the jury by the plaintiff is not sufficient in law to warrant a verdict for the said plaintiff on either of the counts of his said declaration." And thereupon the court ruled in accordance with said motion, that said evidence was not sufficient in law to warrant a verdict for the said plaintiff on either of the counts in his said declaration, and instructed the jury to return a verdict for the defendant. The jury in obedience to this instruction returned for verdict: "We find that the defendant did not promise in manner and form as the plaintiff hath alleged against it, in either count in the said declaration." Which verdict was duly recorded. The plaintiff then and there excepted to the ruling aforesaid, and the instruction given as aforesaid to the jury, and requested that his exceptions might be signed and sealed; and inasmuch as the matters herein set forth do not appear in the record, the same have been reduced to writing, and being found to be correct, this bill of exceptions is allowed by the court and directed to be filed as of the sixth day of September, 1867, before the jury left the bar.

[L. S.] (Signed) NATHAN CLIFFORD,
Asso. Jus. Sup. Court U. S.

[L. S.] (Signed) JOHN LOWELL,
District Judge.

207 A. "In consideration that Charles Burrill, of Brookline, Mass., shall obtain credits upon the quota of the city of Boston, I hereby agree to pay to the said Charles Burrill the sum of $125 per man for each and every full man so credited upon said quota, the money to be paid to the said Burrill whenever he presents to me the official certificate from the proper authority, showing that said credits have been given.

"F. W. LINCOLN, JR., *Mayor.*

"BOSTON, May 31, 1864."

A true record. Attest·

JOHN G. STETSON, *Clerk.*

208 UNITED STATES OF AMERICA, *Massachustts District, ss:*

I, John G. Stetson, clerk of the Circuit Court of the United States within and for the first circuit and district of Massachusetts, hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Charles Burrill, plaintiff, versus the city of Boston, defendant, in said Circuit Court determined.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court at Boston, in said district, this twenty-ninth day of November, A. D. 1867, and of the independence of the United States of America the ninety-second.

[SEAL] JOHN G. STETSON, *Clerk.*

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